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MUNICIPAL MANUAL

COMPRISING THE FOLLOWING:

THE MUNICIPAL ACT
THE LOCAL IMPROVEMENT ACT THE MUNICIPAL ARBITRATIONS ACT
THE ARBITRATION ACT
THE MUNICIPAL FRANCHISES ACT
THE PUBLIC UTILITIES ACT
THE MUNICIPAL ELECTRIC CONTRACTS ACT
THE PATRIOTIC GRANTS ACT
THE BUREAU OF MUNICIPAL AFFAIRS ACT
THE PLANNING AND DEVELOPMENT ACT

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TO THE MEN AND WOMEN OF CANADA, WHO
IN THE HOUR OF THEIR COUNTRY'S NEED
HAVE ANSWERED THE CALL OF DUTY, AND
WITH REVERENT HOMAGE TO THOSE OF THEM
WHO HAVE GIVEN THEIR LIVES FOR THEIR
COUNTRY'S SAKE AND LIBERTY'S
THIS BOOK IS DEDICATED.

PREFACE.

IT is now upwards of sixteen years since the late Mr. Biggar's Municipal Manual was published and the need of a new manual has long been felt.

The many changes that have since been made in the municipal laws of Ontario and of the other Provinces, as well as the numerous cases interpreting and applying those laws which have since been decided, and the recent recognition by the Legislature and by the Courts of the true status and extent of the powers of municipal bodies make that need all the more urgent.

It was because of this that the preparation of this work was undertaken by the undersigned in collaboration with the late John Redmond Meredith, Esquire, K.C.

Early in the progress of the work Mr. Meredith was compelled to withdraw from further active co-operation in it owing to his having to devote the whole of his time to his military duties, in the discharge of which he afterwards died. The result of this was to throw much more of the labour on the editor, under whose eye every line of the work has passed more than once.

An endeavour has been made to collect and to refer to all the important cases in all the Provinces of Canada, and references have also been made to leading cases in England and in the United States and to the works of authors in both countries.

Where the authorities are conflicting, the authors have ventured in some cases to express an opinion as to what the law is, but in other cases they have confined themselves to giving notes of the cases, stating the effect of them, but expressing no opinion as to which of them are to be preferred.

References have been made to the provisions of the municipal laws of other Provinces corresponding with those of the Ontario Act, confining, however, the references to the more important provisions.

As the book is intended for the use not only of the legal profession, but also of members of municipal councils and of municipal officers, an effort has been made to avoid, as far as possible, the use of technical terms and legal phraseology. This, it is hoped, will not render the book less valuable to the lawyer, and it is believed will make it more intelligible and, therefore, more useful to those who are not lawyers.

The forms which have been approved by the Ontario Railway and Municipal Board, it is hoped, will be found useful.

It has not been thought desirable to deal with municipal legislation from the historical point of view. Those who desire to trace the course of legislation in Ontario may do so with the aid of Mr. Biggar's work.

The authors are much indebted to Mr. J. C. Moorehouse for valuable assistance rendered by him in the collection of cases and the selection of those which should be noted; their thanks are also due to Judges and members of the legal profession of other Provinces who have kindly supplied information as to the laws of those provinces.

W.B.W.

Toronto, 1917.

TABLE OF CASES.

Abbott v. Trenton...345, 416
Abell, Re... 397
Ackersviller v. Perth... 616
Acton v. London United Tramways.. 626
Adams and East Whitby, Re... 667
Adams v. Woods... 52
Adamson, Reg. ex rel., v. Boyd....93, 104
Adamson v. Rogers... 369
Aitcheson, Rex v... 527
Albermarle and Eastnor, Lindsay and St. Edmunds, Re... 74
Aldis v. Chatham... 639
Alexander v. Howard... 421
Alexander and Huntsville, Re... 302
Alexander v. Huntsville... 261
Allard v. Charlebois...91, 185
Allard v. St. Pierre... 311
Allen and Napanee, Re... 683
Alliston and Trenton, Re... 449
A.M.C. Medicine Co. v. Montreal... 25
Amesbury v. Wilts... 626
Amyot v. Quebec... 12
Anderson v. South Vancouver... 211
Anderson v. Toronto...615, 642
Anderson v. Victoria...350, 417
Andrews v. Packenham... 570
Angus and Widdifield, Re... 49
Apothecaries Co. v. Jones... 279
Appelbe, Reg. v... 551
Arbuthnot v. Victoria...417, 793, 812
Arcand v. Paquet... 100
Archambault v. Tansey... 89
Arder v. Winnipeg... 34
Armor, Reg. ex rel., v. Coste... 103
Armour, Re... 288
Armour v. Peterborough... 636
Armour v. Regina...39, 273, 378, 662
Armstrong, Re... 288
Armstrong v. Barrie... 616
Armstrong v. Euphemia... 615
Armstrong v. Peel... 616
Armstrong, Rex ex rel., v. Garrett.... 123
Arnold v. Vancouver...386, 393
Arnott, Reg. ex rel., v. Marchant.... 103
Arthur and Meaford, Re... 309
Arthur and Nelson, Re...271, 283, 313
Ashbury v. Riche... 6
Ashfield and Huron, Re... 587
Ashley v. Port Huron... 30
Ashton v. Elgin... 597
Asphodel and Sargant, Re... 177
Atcheson v. Portage La Prairie... 32
Athens H. S. Board and Rear of Yonge and Escott... 329
Athlone Rifle Range, Re... 373
Atkin v. Hamilton... 630
Atkins v. Ptolemy... 164
Atlantic and North-West R. Co. v. Wood... 402
Attorney-General v. Campbell... 409
Attorney-General v. Chambers Electric Light & Power Co... 267
Attorney-General v. Great Northern R. Co... 609
Attorney-General v. Halifax... 11
Attorney-General v. Lichfield... 329
Attorney-General v. Reid... 177
Attorney-General v. Staffordshire... 608
Attorney-General v. Sydney...223, 224
Attorney-General v. Toronto... 263
Attorney-General of Manitoba v. Man. License Holders' Ass'n.... 247
Attorney-General for Ontario v. Hamilton Street R. Co... 249
Aubertin v. Boulevard Ste. Paul... 296
Audet v. Quebec... 647
Ayres v. Toronto... 258
Ayres v. Windsor... 258

Badams v. Toronto... 614
Baie St. Paul v. Second Division of Charlevoix... 566
Baines v. Woodstock... 651
Baird v. Almonte, Re... 107
Baker and Paris, Re... 546
Baldwin v. O'Brien... 579
Baldwin v. Widdifield... 28
Balke v. Edmonton... 510
Ballentine v. Ontario Pipe Line Co.. 623
Balzer v. Gosfield South... 652
Bamber, Reg. v... 631
Band, Rex ex rel., v. McVeity... 104
Bann and Brockville, Re... 302
Bannan v. Toronto... 421
Bannerman v. Lawyer... 65
Barclay v. Ancaster... 616

Barclay and Darlington, Re........282, 420
Barrette v. Gareau 105, 178, 184
Barrette v. St. Barthelemy................ 567
Barrie Public School Board v. Barrie 16
Barry v. Severen Peterson.................. 485
Barton v. Hamilton.............................. 62
Baskerville v. Franklin........................ 33
Bassano, Re 270, 663
Bassett, Reg. v...................................... 542
Bateman v. Bluck 576
Bateman v. Middlesex.......................... 620
Bathurst v. Macpherson..............603, 634
Batsford v. Laurentian Paper Co.... ....633, 638, 652
Bawkes, Rex ex rel., v. Letherby...... 177
Beamish v. Glenn................................. 531
Beauchamp v. Montreal...................... 465
Beauchemin v. Beloeil......................... 661
Beauchemin v. Roxton......................... 561
Beaudet v. Leclercville......................... 563
Beaudoin v. De Lorimier..................... 356
Beauregard v. Roxton Falls..109, 184, 445
Beauvais v. Montreal.....................249, 275
Beck, Rex ex rel., v. Sharp................. 189
Beck v. York.. 7
Bedard v. Beaulieu 619
Bedard v. Lochaber West.................... ....377, 383, 647, 662
Bedard v. Quebec................................. 671
Beech v. Montreal................................. 618
Beemer and Grimsby, Re.................... 687
Begg, Re 169
Belair v. Montreal...........................35, 356
Belanger v. Boucherville..................... 632
Belanger v. Montreal.....................358, 809
Belanger v. St. Louis.......................37, 463
Bell, Re 168
Bell v. Burlington.............................57, 60
Bell v. Hamilton................................... 636
Bell v. Westmount................................. 282
Bell-Irving and Vancouver, Re.......... 6
Bell Telephone Company, Re.............. 45
Bell Telephone Co. v. Chatham.......... 628
Bell Telephone Co. v. Montreal.......... 311
Bell Telephone Co. v. Owen Sound.... ....259, 477, 510
Belleisle v. Hawkesbury 630
Belling v. Hamilton.............................. 614
Bellows v. Sackett................................. 483
Belmont, Reg. v..................................... 421
Belrose v. Chilliwack............................ 310
Benard v. Brisette.................................. 99
Bennetto and Winnipeg, Re................ 398
Benson v. Paull...................................... 412
Berlin, Re 242
Berlin and Breithaupt, Re................... 331
Bernardin v. North Dufferin............7, 17
Berthiaume v. Pilon 200
Beveridge v. Creelman......................... 574
Bickerton, Rex v 388
Bickford v. Chatham............................ 412
Bigaouette v. La Petite Riviere........ 691
Bigelow v. Craigelachie-Glenlivet Distillery Co.. 543
Biggart v. Clinton................................. 642
Biggar v. Crowland.......................620, 634
Billings and Can. North. R. Co., Re 388
Billings v. Ottawa and Carleton...... 256
Bilodeau v. St. Lazare......................... 175
Birch v. Stephenson............................. 471
Birchenough v. Montreal..............273, 351
Birdsall, Re.. 57
Birdsall and Asphodel, Re.................. 670
Bishinski v. Montreal........................... 249
Black v. Ellis....................................222, 417
Black and Orillia, Re........................... 448
Black, Reg. ex rel., v. Campbell..133, 169
Blanchard, Re Dale and Tp. of....5, 295
Blanchard v. St. David........................ 562
Bland, Reg. ex rel., v. Figg..........96, 97
Bleakley v. Prescott 614
Blenheim, Re 299, 450
Blizard, Reg. v....................................... 94
Blomberg and Nelson, Re.................... 540
Blomfield and Starland, Re................ ....355, 386, 394, 661
Blomfield v. Starland.....................10, 270
Bogart v. Belleville.............................. 459
Bogart v. King 314
Boily v. La Baie St. Paul..................... 207
Boissonnault v. Couture....................... 116
Boivin v. St. Johns............................... 305
Bollander v. Ottawa......................512, 540
Bolton and Wentworth, Re........239, 413
Bonin v. Montreal................................. 627
Borror's Conviction, Re....................... 553
Bothwell Election Case, The.............. ....147, 149, 150, 151
Bouchard v. St. Alexandre.................. 671
Bourget v. Sherbrooke......................... 42
Bourgon v. Cumberland...................... 276
Bourque v. Ottawa................................. 8
Bouttete v. Tilbury North.................. 615
Bowie, Re 54
Bowman, Reg. v.................................... 271
Boyce v. Paddington Bor. Council.... 415
Boyce, Rex ex rel., v. Ellis................ 198
Boyce, Rex ex rel., v. Porter........187, 198
Boyd v. Toronto 28
Boyes, Reg. ex rel., v. Detlor........93, 94

Boyle v. Dundas 614
Boyle v. Guelph 615
Boyle and Toronto, Re 348
Bradish v. London 616
Brady v. Sadler 2
Brandon Election, Re 121, 133, 160
Brandon Election, Re; Wallace v. Fleming 171
Brandon Electric Light Co. v. Brandon 11
Brantford Electric & Power Co. & Draper, Re 369
Brantford Golf & Country Club and Lake Erie & North. R. Co., Re 369
Bread Sales Act, Re 246
Breault v. Lindsay 615, 640
Breckman v. Coldwell 82
Breen v. Toronto 620
Brett v. Toronto R. Co 573
Breux v. Montreal 35
Brewer, Re 276
Brighton v. Auston 447
Brisson v. Pelletier 185
British Canadian Securities v. Victoria 31, 523
British Columbia Electric R. Co. v. Stewart 18, 271
Broad, Rex v. 47
Brock v. Robson 417
Brock v. Toronto and Nipissing R. Co. 284
Brockville Election Case 53
Brohm v. Somerville 9, 470
Brosseau v. Ste. Lambert 272
Broun v. Bushey 686
Brown v. Calgary 246, 252
Brown v. Hamilton 26, 37, 45, 471
Brown and Ottawa, Re 365, 369
Brown and Owen Sound, Re 385, 668
Brown v. Regina 26
Brown v. Rex 365
Brown and Toronto, Re 385, 523, 615, 636
Browne v. Black 95
Brundle and Toronto, Re 219
Brunet v. Montreal 36, 256, 304
Brunet v. St. Joachim de la Pointe Claire 618
Brussels v. Ronald 447
Bucke v. New Liskeard 478
Bull v. Shoreditch 634
Burke v. Tilbury North 27
Burland v. Montreal 36
Burnaby, Re Municipality of 132
Burnaby v. British Columbia Electric R. Co 18
Burnett and Durham, Re 357, 381, 397, 400
Burnham v. Peterborough 104
Burnham, Reg. ex rel., v. Hagerman 91, 190
Burns v. Toronto 615, 630, 634
Burrell, Rex v. 177
Burritt and Marlborough, Re 687
Burrows v. G.T.R. Co 635
Burt v. Sydney 377
Burton and Arthur, Re 184
Bush v. Beavan 412
Bushby v. North Sydney 14
Butler v. Toronto 27
Byerley and Winnipeg, Re 358
Byrnes v. Bown 571

Cacouna v. Thibault 563
Caldwell, Re 276
Caldwell and Galt, Re 268, 289, 314
Caledonia and Haldimand, Re 581
Caledonia R. Co. v. Walker's Trustees 380, 667, 668
Calgary v. Canadian Western Natural Gas Co 269, 467
Cameron v. Beaton 190, 204
Cameron v. Dauphin 13, 14
Cameron and U. T. of Hagarty, Sherwood, Jones, Richards and Burns, Re 309, 666
Cameron and Victoria, Re 276, 303
Cameron v. Wait 687
Campbell, Re 57
Campbell v. Brooke 615
Campbell v. C.N.R. Co 576
Campbell v. Cluff and Ottawa 27
Campbell v. Community General Hospital, Almshouse, etc 7, 17, 19
Campbell and Lanark, Re 302, 445
Campbell, Rex v. 412
Campbell and Stratford, Re 545
Campeau v. Grosboillot 88
Canada Atlantic R. Co. v. Cambridge 301
Canada Atlantic R. Co. v. Ottawa 277
Canada Company v. Mitchell 809
Canadian Agency v. Tanner 323, 326
Canadian Bank of Commerce v. Toronto Junction 227
Canadian North. R. Co. Billings, Re 402
Canadian North. R. Co. and Ketcheson, Re 402
Canadian Pacific Lumber, Rex v. 362
Canadian Pacific R. Co. v. Alexander Brown Mill. &] Elev. Co. 371

Canadian Pacific R. Co. v. Falls Power Co. 477
Canadian Pacific R. Co., Rex v. 508
Canadian Pacific R. Co. v. Toronto 260, 495, 510
Carden v. St. Michel de Rougemont 563
Cardoni v. Robitaille 543
Cardston Drug and Book Co. v. Cardston 29
Carleton and Ottawa, Re 433
Carleton v. Regina 510
Carleton, Reg. v. 592
Carlisle v. G.T.R. Co. 637
Carlton v. Sherwood 606
Carman, Re 171
Carney v. Colborne 28
Carr v. Ferguson 661
Carr v. North Bay 133, 168, 186
Carr, Rex ex rel., v. Cuthbert 193
Carroll, Reg. ex rel., v. Beckwith 53
Carslake Hotel Co., Rex v. 367
Carter and Clapp, Re 50
Cartwright and Napanee, Re 304, 341
Carty v. London 645, 652
Casselman Creek Bridge, Re 587
Cassidy v. Moose Jaw 383
Casson v. Stratford 52
Caston v. Toronto 43
Castor v. Uxbridge 621
Caswell v. St. Mary's 625
Caswell and South Norfolk, Re 52
Caton, Reg. v. 551
Cattle v. Thorpe 54
Cavanagh, Reg. ex rel., v. Smith 332
Cave v. Horsell 59
Cavers, Rex ex rel., v. Kelly 167
Cawley v. Branchflower 105
Cedar Rapids Mfg. Co. & Power Co. v. Lacoste 360
Central Pacific R. Co. of California v. Pearson 361
Chadwick v. Toronto 24, 28
Chalifoux v. Goyer 89
Chamberlain v. Turner 105, 330
Chambers v. Winchester 242
Champion and White v. Vancouver 411
Chapman, Reg. v. 690
Chappel v. Sydney 11
Charlton and Toronto, Re 524
Charpentier v. Hebert 192
Chatwin v. Rosedale 33
Chausse v. Olivier 100
Chesley v. Lunenburg 240
Chevalier v. Three Rivers 42
Chicoutimi v. Price 295
Chipman v. Yarmouth 418
Chisholm, Rex v. 245
Choate and Hope, Re 665
Citizens' Light and Power Co. v. St. Louis 20
City Railway Co. v. Citizens' Street R. Co. 479
City and South London R. Co. v. St. Mary Woolnoth 360, 362
Clare v. Edmonton 30
Clark, Re 113
Clark v. Calgary 607
Clarke v. Cuckfield Union Guardians 7
Clarke and Wandsworth, Re 379
Clarkson and Campbellford, Lake Erie & Western R. Co., Re 400
Clarkson v. Musgrave 639
Cleary and Nepean, Re 296
Cleary and Ottawa, Re 312
Cleary v. Windsor 312
Clemens v. Berlin 636
Cleveland Elec. R. Co. v. Cleveland 479
Clinton v. Clinton and Lyons Horse R. Co. 479
Clipsham v. Orillia 27
Cloutier, Re 252, 253, 299
Coaticook v. Laroche 618
Coaticook v. Lothrop 691
Cochrane v. Hamilton 615
Codville, Re 393
Coleman v. Halifax 606
Coleman and McCallum, Re 500, 501, 503
Coleman, Reg. ex rel., v. O'Hare 103
Collier v. Hamilton 28
Collings v. Calgary 30
Collins v. St. John 34
Collins v. Swindle 101
Collins and Water Commissioners of Ottawa, Re 377, 397
Colquhoun v. Fullerton 612, 622
Comeau v. Ste. Edwidge de Clifton 311, 564, 671
Commercial Rub. Co. v. St. Jerome 446
Commissioners of Inland Revenue v. Glasgow and S. W. R. Co. 356
Commissioners of the Woods, Reg. v. 405
Compagnie du Pulpe de Megantic v. Agnes 272
Comte de Richelieu v. Sorel 433
Condon, Rex v. 365, 374
Connell v. Prescott 26
Connolly v. Quebec 12
Connor v. Brant 616
Connor v. Middagh 302, 420

Consumers' Gas Co. v. Toronto 355
Cook v. Collingwood 620
Cook v. North Vancouver 679
Cooksley v. New Westminster 603
Copeland v. Blenheim 629, 630
Copeman, Re 300
Copp, Reg. v. 499
Cormier v. Vaillant 580
Corning v. Yarmouth 223, 418
Cornwallis, Rural Mun. of, v. C.P.R. Co. 72
Corrie v. MacDermott 358
Cote v. Ste. Cecile de Milton 562
Coteau Landing v. Filiatrault 240
Cotton v. Vancouver 580
Couch v. Louise 604, 622, 653
Coughlan v. Victoria 97
Couillard v. Ottawa, Re 169
Coulstring v. N. S. Telephone Co. 526
Courtney, Rex v. 355, 368
Coutts, Reg. v. 540
Coverdale v. Charlton 479
Cowper Essex v. Acton 370, 387
Cox v. Truscott 102
Coxworth, Re 300
Crabbe and Swan River, Re 281, 548
Cradock Simpson v. Westmount 803
Craig, Rex ex rel., v. Ego 195
Cranston v. Oakville 616
Crawford v. St. John 34
Crockett v. Campbellton 492
Croft v. Peterborough 256
Crookston v. Miller 278
Cross and Gladstone, Re 215, 289
Cross v. Ottawa 318
Crown Tailoring Co. v. Toronto 9
Crowther v. Cobourg 28
Cruise v. Moncton 13
Cuddy, Re 225
Cullen v. Glace Bay 605
Cummings and Carleton, Re 393, 592
Cummings v. Dundas 607, 608, 631
Cunard v. Rex 360, 362, 364
Cunningham v. New Westminster 261
Curle v. Brandon 610
Curless v. Grand Falls 25
Curran v. North Norfolk 11
Cushen v. Hamilton 40
Cuzner v. Calgary 607

Daigneau v. East Farnham 565
Dalby v. Wynne 113
Dale, Re 169
Dale and Township of Blanchard 5, 295
Dallas v. St. Louis 36
Dalziel v. Zastie 480
D'Ambrosio v. Montreal 382, 647
Damon v. Lamy 98, 100, 175
Daniels and Burford, Re 556
Daoust v. Ste. Jeanne de Chantal de L'Ile Perrot 663
Daoust v. Valois 100, 118, 139
Darby v. Crowland 39
Darragh v. Coté 25
Davidson v. Lethbridge 30
Davie v. Victoria 15, 405
Davignon v. Stanbridge Station 639
Davis and Beamsville, Re 307
Davis and Clifton, Re 274
Davis and Creemore, Re 49, 285
Davis, Reg. ex rel., v. Carruthers 97
Davis v. Usborne 609, 616
Davis v. Winnipeg 558, 604
Deguise v. Notre Dame des Laurentides 610
Delta v. Vancouver, Victoria & East. R. & Nav. Co. 409
Delta v. Wilson 310
Demers v. Hebert 91, 186
Demers v. Rex 365
Demers v. St. Nicholas 114
Denison, Re; Rex v. Case 412
Denison and Wright, Re 71
Denne and Peterborough, Re 444
Dennis v. Halifax 491
Derby v. Crompton 59
Derinzy v. Ottawa 26
Desaulniers v. Montreal 15, 243
Deschamps v. Montreal 38
Desjardins v. Hebertville 172, 213
Desjardins v. Leclerc 89
Desmarais v. Samson 495
Devitt v. Winnipeg 395
Dewar, Re 276
Dewar and East Williams, Re 299
De Young v. Giles 576
Diblee, Rex v.; Ex p. Smith 279
Dick v. Calgary 421
Dick v. Vaughan 607, 646
Dickie v. Gordon 480
Dickson v. Haldimand 614, 636
Dickson v. Kearney 273, 569, 667, 670
Dillon, Re 167
Dillon v. Raleigh 312
Dimock v. Graham 134
Dimock, Rex v. 280
Dinnick and McCallum, Re 261, 523
Dionne v. Drummond 40, 567
Doble v. C.N.R. Co. 255, 480
Dodds v. Aurora 615

Dodge v. Rex..... 364, 365, 373
Doe dem Hay v. Hull..... 53
Doe dem Robinson v. Clarke..... 53
Doll, Rex v..... 273
Dominion Bowling & Athletic Club, Rex v..... 548
Dominion Paving & Construction Co. v. Toronto..... 7
Donaldson v. Dereham..... 27, 649
Donovan v. Lochiel..... 27
Doran, Reg. ex rel., v. Haggart..... 94
Dorst v. Toronto..... 27, 623
Dougherty and E. Flamborough, Re 269
Douglas v. Fox..... 682
Douglass v. Rhyl Urban Dis. Council 7
Doyle v. Dufferin..... 71
Doyle, Ex parte..... 306
Drake v. Sault Ste. Marie Pulp and Paper Co..... 646
Drennan v. Kingston..... 635, 636, 642
Drolet v. Montreal..... 36
Drouin v. Ste. Monique..... 113
Dube v. Montreal..... 42
Dubois v. St. Louis..... 37
Duclos v. Ely..... 619
Dudevoir v. Waterville..... 37, 45, 497
Dudswell v. Quebec Central R. Co.... 272
Dufferin, County of, v. County of Wellington..... 1
Duignan v. Walker..... 54
Duncan, Re..... 143, 168, 288, 300
Duncan v. Gairns..... 543
Duncan, Reg. ex rel., v. Laughlin.... 194
Dundas v. Hamilton Cataract P. Co. 478
Dundas Street Bridges, Re..... 813
Dunn and Stratford, Re..... 44, 381, 388
Dupuis, Re..... 475
Dupuis v. Blouin..... 249
Dupuis v. St. Isidore..... 566
Durocher, Rex v..... 691
Durochie v. Cornwall..... 614, 625

Eagle v. Charing Cross R. Co..... 384
Earle v. Victoria..... 30
Eastbourne Corp. Reg. v..... 413
East Fremantle v. Annois..... 39, 378
East Gwillimbury v. King..... 7
East Nissouri v. Horseman..... 243, 556
Edmonton v. Brown..... 578, 579
Edmonton v. Macdonald..... 346
Edwards v. North Bay..... 636
Egan v. Saltfleet..... 616, 642
Elliott, Re..... 266
Elliott v. St. Catharines..... 108, 796
Ellis, Re..... 114, 144, 168, 298
Ellis v. Toronto..... 636
Elmsley South v. Miller..... 274, 569, 667, 670
Elves v. McCallum and Edmonton..... 266, 278
Elworthy v. Victoria..... 417
Emard v. Boulevard St. Paul..... 311
Embler v. Wallkill..... 625
Emerson v. Wright..... 18
English v. O'Neill..... 250
Enright v. Montreal..... 275, 499
Esquimalt Water Works Co. v. Victoria..... 252, 346
Ethier v. Ste. Rose..... 319, 340
Euphrasia v. St. Vincent..... 595, 597
Evans v. Huntsville..... 614
Everett v. Raleigh..... 622
Ewing v. Toronto..... 622

Fafard v. Quebec..... 606
Fairbanks v. Douglas..... 199
Fairbanks v. Yarmouth..... 645
Fairman v. Montreal..... 347, 388
Falconer v. Langley..... 90
Falle and Tillsonburg, Re..... 663, 668
Farly v. Montreal..... 415
Farrell, Re..... 414
Farwell v. Sherbrooke..... 213, 305, 319
Faulkner v. Ottawa..... 24, 27
Faux, Rex v..... 285
Featherston v. Lachine..... 636
Fenelon Falls v. Victoria R. Co..... 408
Fenna v. Clare..... 470
Fensom v. C.P.R. Co..... 480
Fenton and Simcoe, Re..... 302
Ferguson v. Southwold..... 625
Ferris, Reg. ex rel., v. Iler..... 97
Ferris, Reg. ex rel., v. Speck..... 91
Field-Marshall and Beamsville, Re.... 400
Filiatrault v. Coteau Landing..... 172, 213, 272, 311
Finlay v. Bristol & Exeter R. C..... 7
Fisher and Carman, Re..... 546
Fitzbridges v. Windsor..... 450
FitzGerald v. Molson's Bk... 283, 318, 342
Fitzgerald, Rex ex rel., v. Stapleford..... 98, 117, 201
Fitzmartin, Re..... 54, 89, 112, 294
Fitzpatrick and New Liskeard, Re..... 356, 363
Fitzroy v. Carleton..... 596
Flatt and United Counties of Prescott and Russell, Re..... 5, 54
Flitton v. Stange..... 491
Flory, Reg. v..... 251

Fluett, Reg. ex rel., v. Gauthier..101, 102
Foley v. Flamborough..... 614
Foley v. South Qu'Appelle..... 39
Ford v. Metropolitan R. Co..... 378
Ford, Reg. ex rel., v. McRae..... 103
Forest v. L'Assomption..... 268, 306, 419, 564, 566
Forrest v. Winnipeg..... 617
Forshaw, Rex v..... 264, 279
Forster and Medicine Hat, Re..... 30
Forster v. Medicine Hat..... 273, 683
Forsyth v. Canniff..... 94, 461
Fortier v. Guerin..... 461
Foster v. Currie..... 101
Foster and Hamilton, Re..... 266, 281
Foster v. Lansdowne..... 32, 33
Foster and Raleigh, Re..... 278, 280
Foster v. Reno..... 256
Fotherby v. Metropolitan R. Co..... 412
Fowler and Nelson, Re..... 385, 398
Francis, Reg. v..... 101, 103
Francis, Reg. ex rel., v. Young..... 53
Frankel v. Winnipeg..... 414, 495
Frankfeldt, Rex v..... 275, 514
Fraser v. Diamond..... 574
Fraser v. Fraserville..... 363
Fredericton v. York..... 349
Fremantle v. Annois..... 354
French and North Saanich, Re..... 271
Froehlich, Rex ex rel., v. Woeller..... 185
Frontenac v. Kingston..... 318
Frontenac Gas Co., Rex v..... 407

Gaby v. Toronto..... 622, 653
Gaffney v. Montreal..... 618
Gagnon v. Haileybury..... 28
Gallagher v. Armstrong..... 109
Gallagher v. Lennox and Addington 615
Gallagher v. Toronto..... 27
Galloway v. Sarnia..... 614, 629
Gamache v. Blais..... 105, 196
Gamble v. Vaughan and Markham..... 651
Garbutt v. Winnipeg..... 43
Gardhouse, Rex ex rel., v. Irwin..95, 903
Garfield v. Toronto..... 24
Garland Mfg. Co. v. Northumberland Paper & Elec Co..... 7
Garland v. Towne..... 484, 488
Garner v. Stamford..... 614
Garnham's Conviction, Re..... 542
Gatineau Point v. Hull..... 414
Gatto v. Toronto..... 28
Gaudet v. Megantic..... 223
Gaudet v. Simpson..... 299
Gaudreau v. Montreal..... 42
Gaul v. Ellice..... 44
Gaulin and Ottawa, Re..... 457
Gauthier v. Caledonia..... 636
Gauthier v. MacDonald..... 100
Geddes, Rex v..... 551
Geddis v. Proprietors of Bann Reservoir..... 22, 354
Gelinais v. Montreal..... 39
Georgetown v. Stimson..... 328
Germain v. Hurteau..... 184
German v. Ottawa..... 636
Gerow and Pickering, Re..... 308
Gesman v. Regina..... 301, 421, 671
Ghee v. Northern Union Gas Co..... 467
Gibb v. Rex..... 407
Gibney v. Yorkton..... 42
Gibson v. North East Hope..... 65
Gibson and Toronto, Re..... 360
Giffard v. Dupuis..... 543
Gignec v. Toronto..... 622, 653
Giguere v. Beauce..... 561
Gilchrist v. Carden..... 627
Giles, Re..... 132, 168
Giles v. Walker..... 491
Gillespie v. Rex..... 364
Gillespie and Toronto, Re..... 799
Gillespie v. Westbourne..... 338
Giroux v. Coteau Landing..... 341
Glidden v. Woodstock..... 621
Gloster v. Toronto Elec. L. Co....27, 622
Gloucester v. Canada Atlantic R. Co. 269, 408, 660
Gloucester Munic. Elec. Petition, Re 102
Gloucester, R. v., Ex parte Murchie.. 95
Glover and Sam Kee, Re..... 253, 262, 531
Glynn v. Niagara Falls..... 389, 616, 633
Godbout v. Ste. Damien de Buckland 347
Godbout v. St. Laurent..... 114
Godden v. Toronto..... 511
Godson and Toronto, Re..... 241
Goldsmith v. London..... 614
Good v. Jacob Y. Shantz & Co..... 251
Gooderham v. Toronto..... 268, 660
Goodison v. McNab..... 624, 625
Gordon v. Belleville..... 629, 630
Gordon v. Victoria..... 604
Gosselin v. St. Jean..... 414
Gougeon v. Montreal..... 627
Goulet v. Ste. Anne..... 562
Goulette v. Sherbrooke..... 560, 606, 608
Gowans v. Assiniboia Club..... 10
Grand Trunk R. Co. v. Coupal..... 388
Grand Trunk R. Co. v. Guelph..... 579
Grand Trunk R. Co. v. Montreal..... 372
Grand Trunk R. Co., Rex v..... 508

Grand Trunk R. Co. v. Toronto........ 573
Grand Valley R. Co., Re.................... 348
Grantham v. Couture.......................... 340
Gravel v. Lake St. Jean...................... 65
Gray v. Dundas.................................... 26
Great Cent. R. Co. v. Banbury Union 373
Great West. R. Co. v. North Cayuga 261
Green, Re.. 247
Greenhow, Reg. v.........................630, 631
Greenlaw v. Can. North. R. Co........ 480
Gregoir v. Deronee.............................. 560
Greig and London, Re........................ 286
Greig v. Merritt.................................. 612
Grey v. Markdale................................ 16
Greystock and Otonabee, Re........282, 546
Grimmer v. Gloucester........................ 338
Grimshaw v. Toronto.......................... 405
Groves v. Wimborne........................... 488
Guardian Assur. Co. v. Chicoutimi.... 503
Guay v. Marsan.................................. 347
Guelph v. Guelph Paving Co.............. 408
Guelph Worsted Spinning Co. v. Guelph 28, 45
Guerin v. Montreal............................ 406
Guest v. Hamilton.............................. 405
Gull Lake, Reg. v................................ 14
Gunder Bjorge, Rex ex rel., v. Zellickson 173, 187
Gunlach v. Montreal......................627, 630
Gun Long, Re...................................... 546
Gutta Percha Manuacturing Co. v. West Toronto Junction................ 15

Hadley v. St. Paul........................253, 283
Hafford v. New Bedford..................... 41
Hagar Voters' List, Re....................... 113
Haggerty v. Victoria........................... 261
Haldimand v. Bell Telephone Co...... 478
Haldimand Election Case, The.......... 161
Haldimand, Reg. v.............................. 585
Halifax, Rex v..................................... 414
Halifax, Rex v., Re Stevens................ 240
Halifax v. Tobin.................................. 606
Halifax v. Walker................................ 626
Hall v. Moose Jaw..40, 268, 275, 278, 421
Hall, Reg. v... 570
Hall, Reg. ex rel., v. Gowanlock........ 191
Hall v. South Norfolk..................171, 289
Halladay and Ottawa, Re..............63, 65
Halpin v. Victoria..............................32, 462
Halton Election Case, The.................. .... 148, 149, 150, 151
Hamilton Board of Education and McNichol, Re.............................77, 350
Hamilton Distillery Co. v. Hamilton 263, 491
Hamilton Powder Co. and Gloucester, Re 26
Hamilton, Rex v.............................543, 54
Hamm v. Bashford, Rosthern Election Petition 20
Hammersmith and City Railway Co. v. Brand 34, 35
Hammill v. Grand Trunk R. Co.......... 2
Hampson v. Dupuis and Montreal.... 39
Haner, Reg. ex rel., v. Roberts........ 10
Hanley v. Brantford............................ 66
Hanley v. Toronto, H. & B. R. Co.... 41
Hanna v. Victoria..........................346, 39
Hanson v. Grand 'Mere....................... 44
Harding v. Cardiff.............................. 30
Harding, Rex ex rel., v. Bennett....90, 10
Harker v. Oakville.............................. 4
Harnovis v. Calgary............................ 2
Harper and East Flamborough, Re.... 32
Harris Construction Co. v. Montreal.. 1
Hart v. Halifax..............................283, 33
Harvey v. B. C. Boat & Engine Co.... 64
Harvey v. Galvin................................ 6
Harvey and Parkdale, Re.................... 35
Harwick and Kent and Chatham, Re 59
Harwood v. Williamson....................... 25
Hastings v. Summerfeldt.................... 14
Hatch and Oakland, Re........170, 289, 30
Hatch v. Rathwell............................... 5
Hawkins v. Halifax, Re....................... 38
Hay v. Bissonnette.............................. 57
Hayes, Rex v....................................... 36
Hayes v. Thompson............................. 24
Haynes v. Copeland......................329, 42
Hays v. Armstrong.............................. 16
Health v. Victoria................................ 54
Hearn, Rex v....................................... 35
Heaslip and Alameda, Re.................... 17
Heath v. Portage La Prairie............... 57
Helm v. Port Hope.............................. 45
Hemphill v. Haldimand....................... 62
Hemphill v. McKinney........................ 3
Henderson, Re..................................... 28
Henderson v. Merthyr Twydfil.......... 23
Henderson and Toronto, Re................ 66
Henderson and West Nissouri, Re.... 30
Herbert v. St. Michel.......................... 11
Herriman and Owen Sound, Re..373, 40
Herring v. Metropolitan Board of Works 37
Hesketh v. Toronto............................. 4
Hewison and Pembroke, Re................ 66
Hickey, Re 168, 17
Hill, Reg. ex rel., v. Betts................. 10
Hill v. Taylor...................................... 2
Hillyard v. G.T.R. Co....................470, 47

Hirtle v. Lunenberg... 605
Hiscox, Reg. v... 255
Hislop v. McGillivray...412, 608
Hislop and Stratford, Re...372, 399
Hislop v. Stratford...812, 814
Hobbs and Toronto, Re... 530
Hobin v. Ottawa... 615
Hobkirk v. Lasalle... 114
Hodge v. Regina... 546
Hodgins and Toronto, Re... 799
Hogan v. Brantford... 321
Hogan, Rex ex rel., v. Jollinette..178, 180
Hogan and Tudor, Re... 29
Hogg v. Brooke... 625
Holden v. Yarmouth... 645
Holditch v. Can. North. R. Co... 387
Holland v. York...572, 615, 622, 653
Hollester v. Montreal... 406
Holmes v. Brown... 413
Holmes v. Goderich... 341
Holmested v. Huron... 431
Holmested and Seaforth, Re... 314
Homewood v. Hamilton...622, 653
Hope v. Hamilton Park Com'rs..416, 462
Hope v. Surrey... 409
Hopkins v. Owen Sound... 608
Hopkins v. Swansea... 489
Horan, Reg. ex rel., v. Evans... 54
Horne v. Vancouver...475, 501
Horning, Reg. v... 245
Hornsea, Reg. v... 631
Horrigan v. Port Arthur... 318
Horseshoe Quarrie Co. and St. Mary's & Western Ont. R. Co... 398
Houghton and Argyle, Re... 304
Houle v. Brodeur...98, 99
Houle v. St. Louis-De-Gonzague... 382
Howard, Reg. v... 499
Howard v. St. Thomas... 621
Howarth v. McGugan... 621
Howse v. Southwold... 622
Howson v. Medicine Hat; Yuill v. Medicine Hat...304, 348
Hubert v. Yarmouth... 608
Hubley v. Halifax... 351
Hudon v. Roy... 216
Hull v. Bergeron...38, 377, 382
Hull v. Gatineau Macadamized and Gravelled Road Co... 412
Humphreys and Victoria, Re...360, 372
Hunt v. Palmerston... 458
Hunt v. Wimbledon...6, 16, 19
Hunter v. Montreal... 636
Hunter and Toronto, Re... 813
Hunting, Rex v... 374
Hurd v. Hamilton... 28
Hurdman v. North-Eastern R. Co... 485
Huson and South Norwich, Re... 303
Hutchison v. Westmount... 662
Huth v. Windsor...616, 625
Hutson v. Regina...618, 653

Iberville v. Banque du Peuple... 340
Ile aux Coudres v. Charlevoix... 433
Imperial Bank v. Motton... 241
Ince v. Toronto... 636
Indiana Springs Co. v. Brown... 610
Inglis and Toronto, Re...259, 443
Ingoldsby, Rex ex rel., v. Spiers... 195
Innis v. Havelock... 615
Inverness Railway & Coal Co., Rex v. 363
Irwin v. Blairmore... 249
Iveson v. Winnipeg... 637
Ivison, Rex ex rel., v. Irwin...161, 168

J. F. Brown Co. and Toronto, Re... ...385, 523, 615, 636
Jack v. Stevenson... 480
Jackson v. North Vancouver... 355
Jackson v. Toronto... 615
Jacques v. Gelinas... 100
James v. Bridgeburg...27, 35
James v. Toronto... 634
James Bay R. Co. v. Armstrong... 400
Jamieson v. Edmonton...30, 472, 601
Jamieson, Rex ex rel., v. Cook... 93
Jarvis v. Fleming... 416
Jarvis Local Option By-Law, Re... 166
Jephson v. Niagara Falls... 26
Jervis v. Newcastle and Gateshead Water Co...372, 373
Jewel v. Stead... 54
Jim Sing, Reg. v...255, 266, 279, 540
Joanisse, Reg. ex rel., v. Mason... 90
Jodoin v. St. Hyacinthe... 114
Johnson v. Allen... 164
Johnson v. Halifax... 14
Johnson v. Nelson... 614
Johnston v. Point Edward... 614
Johnston, Reg. v...421, 502
Johnston v. Toronto... 24
Jonas v. Gilbert...251, 265, 277
Joncas v. Ottawa... 636
Jones, Re... 276
Jones v. Johnson... 329
Jones and London, Re...212, 215
Jones v. Nicholls... 640
Jones and Ottawa, Re... 521
Jones v. Port Arthur... 347
Jones and Stribell, Re; Re Local Improvement District... 173
Jones v. Swift Current... 644

Jones v. Tuckersmith....259, 575, 668, 687
Journal Printing Co. v. McVeity.... 225
Joyce, Re.... 300
Judge v. Liverpool.... 25
Julien v. Bernier.... 116
Juneau v. Lewis....263, 341, 456
Justices of Shropshire, Reg. v.... 95

Kane v. Kaslo.... 310
Karry and Chatham, Re.... 545
Kaslo Municipal Voters' List, Re.... 113
Kaulbach v. McKean.... 203
Kay, Rex v., Ex p. Le Blanc.... 248
Keachie v. Toronto.... 630
Kean v. Edwards.... 309
Keay v. Regina....306, 442, 450
Keech v. Smith's Falls....620, 630, 633
Keefe, Reg. v.... 250
Keeling and Township of Brant, Re 65
Keenan, Rex v.... 490
Kelly v. Barton.... 41
Kelly v. Carrick.... 615
Kelly and Toronto Junction, Re.... 276
Kelly v. Whitchurch.... 622
Kelly v. Winnipeg.... 9
Kemp and Toronto, Re.... 798
Kennedy v. Couillard.... 249
Kennedy v. Dickson....93, 104
Kennedy v. Portage La Prairie.... 617
Kenny v. St. Clements.... 33
Kerr, Re; Ex parte Murchie.... 215
Kerr and Gold, Re.... 115
Kerr and Smith, Re.... 103
Kerr and Thornbury, Re.... 168
Kershaw, Reg. v.... 4
Kettle v. Winnipeg.... 7
Kew v. London....615, 629
Kiely, Re....266, 528
Killeleagh v. Brantford....636, 640
Kilpatrick v. Winnipeg.... 11
Kilworth Rifle Range, Re.... 379
King v. Beamish.... 7
King v. Mathews....332, 818
King v. Toronto.... 457
King's Asbestos Mines v. South Thet-
King's Asbestos Mines v. South Thetford.... 661
Kingston Cotton Mill Co., Re.... 235
Kingston v. Drennan.... 637
Kingston v. Kingston, Portsmouth and Cataraqui E. R. Co.... 412
Kingston L. H. & P. Co. and Kingston, Re.... 350
Kinsman v. Mersea.... 616
Kirk, Reg. v.... 103
Kirk v. Toronto....34, 620, 634
Knox and Belleville, Re.... 522
Knudsen and St. Boniface, Re....259, 664
Knudsen v. St. Boniface.... 301
Koch v. G.T.P. R. Co.... 480
Kruse v. Johnson.... 47
Kuusisto v. Port Arthur....29, 635, 640

Labadie v. Ringuet....121, 187
L'Abbe and Blind River, Re.... 108
L'abbe v. Morin.... 204
Laberge v. Montreal.... 414
Labombarde v. Chatham.... 622
La Caisse d'Economie v. Quebec.... 228
Lacasse v. Labonte.... 251
La Cie des Poutres Siegwart v. Deschambault.... 21
La Cie pour l'Eclairage au Gas de St. Hyacinthe v. La Cie des Pouvoirs Hydraliques de St. Hyacinthe.... 282
Lafferty v. Stock.... 420
La Fleche, Rex ex rel., v. Sheppard.. 99
Laforge, Rex v.... 553
Laframboise v. Ladouceur.... 204
Laighton v. Carthage.... 479
Lajeunesse v. St. Jerome.... 305
Lake v. Butler.... 53
Lake Erie and North. R. Co. v. Brantford Gold & Country Club, Re.. 403
Lake Erie &,North. R. Co. and Muir, Re.... 403
Lake Erie and N. R. Co. v. Schooley 357
Lalonge dit Gascon v. St. Vincent de Paul.... 619
Lamb and Ottawa, Re....301, 444
Lambert v. Toronto....29, 408, 653
Lamontagne v. Levis....444, 448, 512
Lamontagne v. Paquet.... 139
Lamontagne v. Woodlands.... 33
Lamport v. Toronto.... 27
Landreville v. Gouin.... 487
Landry v. Judd.... 185
Landulph, Rex v.... 631
Lane v. Toronto.... 242
Lang, Re.... 552
Langley, Reg. v.... 552
Langlois v. Auger....140, 204
Laplante and Peterborough, Re.... 670
Lapointe v. Berthier.... 40
Lapointe v. Larin....175, 200
Lapointe v. Messier.... 98
Larcher v. Sudbury....569, 574
Larin v. Nault.... 192
Lariviere v. Richmond....282, 445

Larkin v. Polson 52
Laroche v. Ste. Emilie de Lotbiniere 305
Larwood, Rex v. 177
La Societe de Construction du Canada v. La Banque Nationale 340
Laterreur v. Blais 212
Latour v. Lefebvre 91, 105, 187
Laughton, Rex v. 247
Laurentide Paper Co. v. Rex 24, 377, 378
Laursen and South Vancouver, Re 401
Lavere v. Smith's Falls 28
Lavertu v. Ste. Romauld 579
Lavoie v. St. Alexis 213, 306
Lawford v. Billericay Rural District Council 7, 20
Lawrence v. Lucknow 7
Lawrence v. Owen Sound 26
Lazarus v. Toronto 486, 487, 488
Leahy and Lakefield, Re 201
Leak and Toronto, Re 372
Leblanc v. Fraserville 606
l'Eclairage au Gaz, etc. v. Pouri 322
Leclerc v. Montreal 627
Leclerc v. Phillips 579
Le Cure, etc. de Ste. Agnes de Montreal v. Montreal 652
Ledoux v. Mile End 340
Lee v. DeMontigny 248
Lee, Reg. ex rel., v. Gilmour 106
Lee, Rex v. 246
Legault v. Cote St. Paul 617
Lemire v. Faucher 210, 211
Lemire v. Neault; Lemire v. McClay; Lemire v. Turcott 186, 200
Lennon v. Westmount 311
Lennox Election Case 148, 150, 151
Leroux v. St. Marc de Cournoyer 564
Leslie v. Malahide 7, 10, 227
Lester v. Ottawa 29
Levasseur v. Pelletier 114
Levin v. New York Elevated R. Co. 388
Levinson v. Montreal 42
Levis v. Bienville 411
Levis v. King 447
Levy, Reg. v. 263, 538, 554
Lewis v. Carr 96
Lewis v. Teale 420
L'Hussier v. Brosseau 682
Lichtenheim v. Pointe-Claire 415
Lincoln, Re 161
Lincoln Election Case, The 53
Lindell v. Victoria 604
Linden and Toronto, Re 391
Lingke v. Christchurch 378
Linstead v. Whitchurch 625
Liquor License Act, Re 304
Lister v. Clinton 669, 670
Lirette v. Moncton 25
Little and Local Improvement Dist. No. 189 290
Little v. McCartney 171
Little v. Smith 579
Liverpool, etc., R. Co., Rex v. 371
Livingston, Rex ex rel., v. East 97
Livingston, Rex ex rel., v. McNamara 97, 102
Livingstone v. Edmonton 348
Lloy v. Dartmouth 34
Loach v. British Columbia E. R. Co. 32
Local Improvement Dist No. 189, Re 285
Local Improvement Dist. No. 11, A3, Re; Re Jones and Stribell 173
Local Offices of High Court, Re 431
Logan v. Hurlburt 43
Logan v. Logan 44
Logan and Toronto, Re 357
Loiselle and Red Deer, Re 259
Loiselle v. Temiskaming 273
London County Council v. Atty-Gen. 6
London Electric Lighting Co. v. London Corporation 98
London, Huron and Bruce R. Co., and East Wawanosh, Re 412
London v. Newmarket 450
London Street R. Co. v. London 176, 276
Long Eaton, etc. v. Midland R. Co. 369
Lon Kai Long, Ex p. 690
Loo Gee Wing v. Amor 275, 494
Lordly v. Halifax 605
Louisville Trust Co. v. Cincinnati 479
Love v. Machray 113
Lucas and Chesterfield Gas & Water Board, Re 359, 360
Lucas v. Moore 614
Lucas v. North Vancouver 453
Ludgate v. Ottawa 636
Lusk v. Calgary; Wheatley v. Calgary 616, 644
Lussier v. Maisonneuve 267
Luton v. Yarmouth 614
Lynch v. City of Glasgow 361
Lynch v. Glasgow Corp 370
Lynn v. Hamilton 636

MacArthur v. Portage La Prairie 322
Macartney v. Haldimand 17
Macdonald, Re 212, 243
Macdonald v. Inverness 14
Macdonald and Toronto, Re 357
Macdonald v. Yarmouth 612

Macdonell v. Toronto.... 798
Macfarlane v. Colam.... 613
Macfie v. Hutchinson.... 461
MacIlreith v. Hart....415, 418, 558
MacIntosh v. Westmount.... 38
Mack, Re....90, 199
Mack v. Lake Winnipeg Shipping Co. 34
Mack, Reg. ex rel., v. Manning..103, 106
Mack, Rex v....90, 183
Mackay v. Toronto.... 17
Mackenzie and Brantford, Re....266, 465
Mackenzie v. Toronto..263, 549, 491, 499
Mackenzie v. West Flamborough.... 26
Macklin, Rex ex rel., v. Thompson.... 168
MacLean v. Fernie....295, 305
Macnamara, Rex ex rel., v. Heffernan.... 103
Macomb v. Welland.... 573
Macpherson, Rex v....365, 373
Macpherson v. Vancouver....620, 651
Madill v. Caledon.... 614
Magann v. Auger.... 543
Maguire v. Liverpool....605, 634
Maher, Rex v....496, 510
Mahoney v. Ottawa.... 636
Maidstone and Essex, Re.... 587
Major Hill Taxicab Co. and Ottawa, Re....303, 426, 554, 555
Malahide and Elgin, Re.... 588
Malcolm v. Blairmore.... 17
Malone v. Hamilton.... 63
Malott v. Mersea.... 421
Maltais v. Pointe au Pic.... 618
Manchester, Rex v.... 512
Manders v. Moose Jaw.... 13
Mandley v. Monck.... 27
Mann v. St. Thomas.... 636
Manning v. Bergman.... 322
Manning v. Winnipeg....17, 19, 243
Manuel, Rex v....365, 366
Marbleton v. Ruel.... 37
Marchildon v. Societe Baril & Cie.. ....272, 282
Marion v. Montcalm.... 625
Markham and Aurora, Re.... 448
Marsan v. Grand Trunk R. Co.... 575
Marsan v. Guay....273, 662
Marsh v. Hamilton.... 630
Marshall v. Industrial Exhib. Assoc. 462
Marshall, Reg. v.... 542
Martin v. Arthabaska.... 65
Martin v. Hull.... 340
Martin v. Middlesex....23, 28
Martin and Moulton, Re....668, 670
Martin, Reg. v.... 474
Martin, Rex ex rel., v. Jacques..102, 180
Martin, Rex ex rel., v. Watson.... 122
Martin v. St. Catharines.... 251
Martineau v. Debien.... 109
Mason v. Meston....99, 103
Masonic Temple Co. and Toronto, Re 524
Masse v. Ekers....176, 319
Masson v. Hebert....93, 204
Mathews v. Hamilton.... 26
Matson, Reg. ex rel., v. Butler.... 192
Maxwell v. Clarke....611, 612, 613, 621
Maycock and Winnipeg, Re....262, 533
Mayor, etc., of Eastbourne, Reg. v.... 412
Mayor, etc., Hamilton v. Kannuluik 29
McArthur, Rex v....381, 668
McArthur and Southwold, Re.... 667
McAuliffe v. Welland.... 410
McBean v. Wyllie.... 499
McCabe v. Vaudreuil.... 567
McCann v. Hinchinbrook.... 567
McCann v. Toronto.... 44
McCaulay and Toronto, Re.... 367
McCleave v. Moncton....41, 42
McClelland and Sutton, Re.... 328
McColl and Toronto, Re.... 405
McConnell v. Toronto (Township).... 29
McCormick v. Pelée.... 631
McCoubrey and Toronto, Re.... 246
McCracken and Sherbourne, Re.... ....48, 49, 281
McCrae and Brussels, Re.... 800
McDonald v. Dickenson....461, 650
McDonald, Rex v.... 369
McDonald, Rex ex rel., v. Robertson 98
McDonald v. Sydney.... 621
McDougall v. Water Commissioners of Windsor....16, 329
McEwan and Calgary, Re....270, 350
McFarlane, Rex ex rel., v. Balment.. 199
McFarlane, Rex ex rel., v. Coulter.... 187
McGarr v. Prescott....614, 627
McGarvey v. Strathroy.... 26
McGauley, Reg. v.... 309
McGillivray v. Moose Jaw....39, 607
McGloghlon and Dresden, Re.... 269
McGregor, Rex v.... 468
McGregor v. Watford.... 573
McGuire v. Brighton.... 28
McGuire, Reg. ex rel., v. Birkett..97, 103
McGuire v. Waterloo.... 6
McHardy v. Ellice.... 1
McInnes v. Egremont....614, 639, 640
McInnis v. Charlottetown.... 623
McIntosh v. Grand Forks.... 11
McIntosh v. Simcoe....620, 623

McIntyre v. Lindsay......622, 653
McKay v. Port Dover...... 615
McKay v. St. John...... 25
McKelvin v. London...... 652
McKenzie v. Chilliwack...... 436
McKenzie and Teeswater, Re...... 349
McKinnon v. McNeil...... 152
McKinnon v. Wellington......616, 626
McLaughlin, Rex v...... 388
McLean v. Crown Tailoring Co...... 610
McLean v. Howland...... 579
McLean and North Bay, Re...... 667
McLean and Ops, Re...... 797
McLean, Reg. ex rel., v. Watson...... 103
McLean v. Sault Ste. Marie...... 797
McLellan v. Assiniboia...... 284
McLellan v. McIsaac......190, 204
McLeod and East Toronto, Re....63, 65
McLeod, Rex ex rel., v. Bathurst...... 186
McMillan v. Portage La Prairie...... 272, 509
McMillan, Reg. v...... 251
McMulkin v. Oxford...... 27
McMullen and Caradoc, Rex ex rel.. 575
McMullen, Reg. ex rel., v. DeLisle.... 97
McNab and Renfrew, Re...... 588
McNair v. Collin...... 549
McNichol and Winnipeg, Re......357, 366
McNiroy v. Bracebridge......615, 629
McNutt, Re...... 248
McPhalen v. Vancouver......603, 604
McPhee v. Toronto......29, 462
McQuillan v. St. Mary's...... 636
McRae v. Elmshurst; Re N. Cypress 56
McSorley v. St. John...... 43
Mead v. Etobicoke...... 645
Mead and Moose Jaw, Re......52, 173, 290
Mearns v. Petrolia...... 174
Medicine Hat By-Law, Re......63, 270
Medland and Toronto, Re...... 818
Medler and Arnot and Toronto, Re.. 381
Meehan, Rex v...... 412
Mee Wah, Reg. v......264, 277
Megantic v. Nelson...... 565
Meldrum v. Black...... 256
Meloche v. Davidson......568, 647
Ménard v. Bordeaux......253, 283
Mercier v. Bellechasse...... 50
Mercier v. Warwick......273, 296
Meredith v. Onslow...... 560
Meredith v. Peer...... 488
Merritt v. Ottawa...... 636
Merritt v. Toronto......45, 254, 281
Messenger v. Bridgetown......35, 621
Metayer dit St. Onge, Ex parte...... 159
Methodist Church v. Welland...... 27
Metropolitan Board of Works v. McCarthy...... 376
Metropolitan R. Co. v. Fowler...... 355
Metropolitan Water Board v. Assess. Com. of Chertsey Union...... 359
Meyer and Toronto, Re...... 368
Meyers, Rex v...... 551
Michie and Toronto, Re...... 801
Milk Farm Products v. Buist......263, 482
Miller v. North Fredericksburgh...... 634
Miller and Virden, Re...... 513
Miller v. Wentworth...... 616
Milligan, Rex ex rel., v. Harrison...... 113
Milligan v. Thorn...... 510
Mills v. Freel...... 569
Mills and Hamilton, Re...... 259
Milne, Re......132, 169
Milton v. La Cote St. Paul...... 42
Milton v. Surrey...... 31
Minns v. Omemee...... 622
Mission, Reg. v......396, 413
Mitchell v. Pembroke...... 431
Mitchell, Reg. ex rel., v. Davidson.... 197
Mitchell, Rex ex rel., v. McKenzie..93, 104
Mitchell v. Sandwich, Windsor and Amherstburg R. Co......646, 878
Mitchell v. Winnipeg......622, 638, 653
Moffet v. Ruttan...... 413
Moir v. Huntingdon...... 290
Moire, Re...... 55
Monck Election Case, The......148, 149, 150, 151, 152
Moncton Land Co., Rex v...... 360
Mondor v. Tache...... 33
Mondoux v. Yamaska......559, 560, 564
Mongenais v. Rigaud..172, 213, 260, 285
Montgomery v. Graham...... 53
Montreal v. Baxter...... 358
Montreal v. Beauvais...... 263
Montreal Brewing Co. v. Montreal.... 664
Montreal v. Emond...... 541
Montreal v. Gamache...... 644
Montreal v. Garon...... 262
Montreal v. Gauthier......35, 406
Montreal v. Hatton...... 280
Montreal v. Hogan...... 406
Montreal v. Lafontaine Park...... 406
Montreal v. Le Cure, etc. de Ste. Agnes de Montreal...... 652
Montreal v. Montreal Brewing Co.... 382
Montreal v. Mulcair...... 35
Montreal v. O'Flaherty......349, 578
Montreal v. Tiffin...... 568
Montreal v. Tremblay...... 275
Montreal v. Walker...... 495
Mooney, Rex ex rel., v. Robertson.... 198

Moore v. Cornwall 28
Moore v. McKibbin 52
Moore, Reg. ex rel., v. Miller 101
Moore, Rex ex rel., v. Hamill 342
Moore v. Toronto 462
Moore v. Woodstock Woollen M. Co. 576
Morden Election, Re; Ruddell v. Garrett 90
Moreau v. Lamarche 192
Morency v. L'Ange-Gardien 619
Morgan v. Metropolitan R. Co 412
Morrison v. Inland Revenue Com'rs 369
Morrison v. Toronto 615, 642
Morton, Rex ex rel., v. Roberts 91, 177, 183, 188
Morton, Rex ex rel., v. Rymal 177, 183, 188
Morton and St. Thomas, Re 259
Mouflet v. Cole 54
Moulton and Canborough and Co. of Haldimand, Re Tp. of 588
Moyer, Rex v. 572
Mud Lake Bridge, Re 587
Mullis v. Hubbard 549
Municipal Homes & Invest. Corp. v. Legarê 415
Murchie, Ex parte; Re Kerr 215
Murchie, Ex p.; R. v. Restigouche 95
Murdock v. Westmount 37
Murphy, Rex v. 365, 388
Myerscough and Lake Erie & Northern R. Co., Re 400

Naef v. Mutter 54
Nash and McCracken, Re 263, 482
Nasmith and Toronto, Re 245
National Malleable Castings Co. v. Smith's Falls Malleable Castings Co 6, 8
National Trust Co. v. C.P.R. Co. 365, 374
Neal and Port Hope, Re 382, 385, 667, 668
Nell v. Longbottom 96
Nelles v. Windsor, Essex & Lake Shore Rapid R. Co 412
Nelson City By-law No. 11, Re 310
Nelson v. Megantic 559, 671
Neptune Meter Co. v. Halifax 11
Nettleton v. Prescott 27, 436
Newburgh and Lennox and Addington, Re 581
Newby v. Brownlee 240
New Brunswick R. Co., Rex v. 373
New Glasgow v. Brown 108, 350
New Hamburg v. New Hamburg Mfg. Co 446
New Hamburg v. Waterloo 581
New Rockland v. Torrance 557, 559
New Westminster v. Brighouse 30, 271, 346
Niagara v. Fisher 575
Niagara Navig. Co. v. Niagara 575
Nicholls v. Rawding 184
Nicholson v. Guardians Bradfield Union 7
Nicholson v. St. Catharines Collegiate Institute Board 17
Noble v. Toronto 24
Noble v. Turtle Mountain 413, 607
Nolin v. Gosselin 569
Norfolk v. Roberts 48
Normanby and Carrick, Re 597
Norris v. Irish Land Co 412
North Curry, Rex v. 54
North Cypress, Re; McRae v. Elmshurst 56
North Dorchester v. Middlesex 1
North Gower Local Option By-law, Re 168
North Grey Election Case, The 148, 149, 150, 151
North Renfrew Provincial Election 55
North Simcoe R. Co. and Toronto, Re 412
North & South Western Junction R. Co. v. Brentford Union 373
North Vancouver v. Keene 230
North Vancouver v. Loutet 396
North Vancouver v. Tracy 10
North Victoria Election Case, The 148, 149, 150, 151
Northcote v. Pulsford 131
Northern Counties Invest. Trust and Vancouver, Re 386
Norton v. Taylor 98
Notre Dame de Bonsecours v. Bessette 12
Nunn, Reg. v. 474
Nunn, Rex v.; Re Rogers and Nunn 494
Nutton v. Wilson 96

Oak Bay v. Gardner 409
O'Carroll v. Hastings 102
O'Connor v. Hamilton 615, 642, 643
O'Connor v. Victoria 31
O'Donnell, Rex ex rel., v. Broomfield 93, 194
O'Donnell v. Widdifield 211
O'Flynn and Davidson, Re 296
Ogle, Rex v. 551

O'Grady v. Toronto........ 40
Okell v. Victoria........ 357
Ollman v. Hamilton........ 28
O'Neil v. Harper........571, 646
O'Neil v. London........ 620
O'Neil v. Windham........612, 614, 621
O'Neill and Toronto, Re........ 371
On Hing, Reg. v........ 500
Onslow v. McGough........ 577
Ontario v. Atty-Gen. of Canada........ 247
Ontario and Minnesota Pow. Co., Re 361
Orangeville Local Option By-law, Re 161
Organ v. Toronto........625, 653
Ormsby v. Mulmur........ 29
Osborne v. Kingston........ 491
O'Shea, Rex ex rel., v. Letherby........96, 97, 102, 122, 193
Oskey v. Kingston........ 28
Osler, Reg. v........ 421
Ossalinsky v. Brown........ 388
Ostrom and Sidney, Re........302, 303, 670
Ottawa and Carleton, Re........ 592
Ottawa and Gloucester Road Co. v. Ottawa........585, 592
Ottawa and Tp. of Nepean, Re City of........ 74
Ottawa v. Ottawa Electric Co........ 238
Ottawa and Provincial Board of Health, Re........312, 413
Ouellette v. Cantin........ 209
Ouimet v. Baxin........ 249
Outremont v. Joyce........ 662
Owens, Reg. v........ 94

Pacaud v. Halifax South........ 340
Padwell, Reg. ex rel., v. Stewart........ 105
Page v. Genois........109, 200
Page v. Longueuil........ 414
Pageau v. St. Ambroise........631, 638
Paisley v. Chilliwack........ 18
Palmatier v. McKibbon........273, 569, 660, 667, 670
Palmer v. Toronto........ 636
Pang Sing and Chatham, Re........ 303
Papineau v. Longueuil........ 25
Paquet v. Montreal........382, 406
Paro v. Shefford........ 82
Park, Rex ex rel., v. Street........187, 189
Parke, Re........ 121
Parsons and Eastnor, Re........ 400
Parsons v. London........48, 351
Passmore v. Edmonton........ 389
Passmore v. Hamilton........ 27
Pastoral Finance Assoc. v. The Minister........ 356
Patchell v. Raikes........393, 416
Paterson v. Bowes........ 415
Paterson v. Brown........ 197
Patry v. Levis........ 311
Patterson v. Aldborough........ 616
Patterson, Reg. ex rel., v. Clarke........ 106
Pattison v. St. John........ 34
Pattison v. Wainfleet........611, 614
Payette v. Montreal........ 38
Payne, Rex ex rel., v. Chew........ 186
Peake v. Mitchell........579, 646
Pearson v. York........607, 620, 633
Peart v. G.T.R. Co........ 630
Pease v. Moosomin......306, 419, 421, 427
Peck and Galt, Re........ 259
Peclet v. Marchand........ 282
Pelletier v. de Lorimier........ 174
Pells v. Boswell........ 259
Pelly v. Chilliwack........812, 815
Pelot and Dover, Re........259, 663
Pelton, Re........ 240
Pember, Rex v........ 551
Pembroke v. Canada Central R. Co.. 269
Pembroke and Renfrew, Re........581, 655
Penny v. Brent........ 199
People's Milling Co. and Meaford, Re........ 444
Pepin v. Massueville........ 50
Perdue v. Chinguacousy........ 256
Pérodeau v. Richard........ 419
Perram and Hanover, Re........371, 394
Perreault v. Levis........ 177
Perron v. Beloeil........ 414
Perry v. Morley........113, 115
Perth, Reg. v........ 258
Peruvian Railways Co., Re........ 340
Pesant v. St. Leonard........ 564
Peterborough v. G.T.R. Co........ 412
Peterborough and Peterborough Electric Light Co., Re........ 400
Peters, Rex v........ 369
Peters v. Sinclair........ 574
Peterson v. Bitulithic and Contr. Co. 346
Petman v. Toronto........ 421
Pettigrew v. Baillarge and Quebec.... 412
Phillifant v. Keller and South Vancouver........ 31
Phillips v. Belleville........ 351
Phillips, Reg. v........ 540
Pickels v. Rex........ 383
Pickett and Wainfleet, Re........ 168
Pictou v. Geldert........ 634
Pictou v. New Glasgow........ 350
Pierce, Re........265, 277
Pigeon v. Recorders' Court and Montreal........ 279

Pigott v. Battleford ... 340
Pillar, Rex ex rel., v. Bourdeau ... 122
Pim v. Ontario ... 7
Pinder v. Evans ... 100
Pinsonnault v. St. Jacques the Less 566
Pipe, Reg. v. ... 263, 510
Piper v. Paipoonge ... 574
Pipher v. Whetchurch ... 640
Pirie and Dundas, Re ... 443
Pirie v. Parry Sound Lum. Co. ... 665, 687
Piton v. Stoneham and Tewkesbury 12
Plant v. Normanby ... 615
Plested v. McLeod ... 421
Plunket, Reg. v. ... 570
Plymouth v. Chesnut Hill, etc. R. Co. ... 479
Pockett v. Poole ... 576
Pocock v. Toronto ... 40
Pollock, Rex v. ... 249
Polson v. Owen Sound ... 444
Ponsford, Rex ex rel., v. Roberts ... 189, 190
Ponton v. Winnipeg ... 18, 239, 349
Pon Yin v. Edmonton ... 41
Poole v. Victoria ... 247, 279
Pope, Rex v. ... 265, 280, 537
Portage Fruit Co. v. Portage La Prairie ... 33
Port Arthur and Rainy River Election Case ... 114, 115, 298
Portland v. Griffiths ... 612
Potter v. St. Lambert ... 633
Potts v. Dunnville ... 317
Poulin v. Ottawa ... 616, 620
Pow v. West Oxford ... 615
Powell v. Guest ... 54
Powell v. Vancouver ... 349
Power Rex v. ... 366
Prangley, Re ... 168
Pratt v. Stratford ... 256, 258
Prescott Election Case, The ... 144
Preston, Reg. v. ... 551
Preston, Reg. ex rel., v. Touchburn ... 132, 167
Prévost v. Ménard ... 67
Prevost v. Montreal ... 617
Prevost v. Parent ... 187
Prevost v. Ste. Jerome ... 311
Price v. Cataraqui Bridge Co. ... 628
Price v. Tremblay ... 391
Prince Albert v. Vachon ... 383, 389
Prince Edward Election Case, The ... 149
Pritchard v. Mayor of Bangor ... 121, 156
Prosterman, Rex v. ... 541
Proulx v. Beausoleil ... 116
Prue v. Brockville ... 615
Pryce and Toronto, Re ... 384
Purmal v. Medicine Hat ... 29
Quebec v. G.T.R. Co. ... 248, 267, 280
Quebec v. Howe ... 634
Quebec Jacques-Cartier Electric Co. v. Rex ... 407
Quebec v. Mahoney ... 503
Queen's County Election Case, The ... 149, 150, 151
Quesnel v. Emard and Montreal ... 38
Quigley, Re ... 133, 169, 186
Quinlan v. Montreal ... 13
Quinn v. Orillia ... 500
Quong Wing, Rex v. ... 250

Raby v. Road Comm'rs a Barriére de Montreal ... 565
Rae v. Trim ... 574
Railway Sleepers Supply Co., Re ... 95
Raleigh v. Williams ... 22, 23
Ramsay v. West Vancouver ... 382
Randall v. Calgary ... 30, 45
Rankin, Reg. v. ... 570
Ranton, Reg. ex rel., v. Counter ... 105
Rasconi v. Montreal ... 265
Rat Portage v. Citizens Electric Co. ... 8
Ratteau v. Drosse ... 36, 45, 472
Ray v. Petrolia ... 613
Raymond v. Rex ... 359, 364, 377
Read v. Toronto ... 634
Real Estate Invest. Co. v. Richmond 20
Reaman v. Winnipeg ... 276
Reaume v. Windsor ... 575
Red Deer v. Western Gen. Elec. Co. ... 409
Redman v. Buchanan ... 95
Reedy, Rex v. ... 423
Regina Cartage Co. v. Regina ... 607
Regina v. Gull Lake ... 14
Regina v. Justices of Shropshire ... 95
Reg. v. Appelbe ... 551
Reg. v. Bamber ... 631
Reg. v. Bassett ... 542
Reg. v. Belmont ... 421
Reg. v. Blizard ... 94
Reg. v. Bowman ... 271
Reg. v. Carleton ... 592
Reg. v. Caton ... 551
Reg. v. Chapman ... 690
Reg. v. Comm'rs of the Woods ... 405
Reg. v. Copp ... 499
Reg. v. Coutts ... 540
Reg. v. Eastbourne Corp. ... 413
Reg. v. Flory ... 251
Reg. v. Francis ... 101, 103
Reg. v. Greenhow ... 630
Reg. v. Haldimand ... 585
Reg. v. Hall ... 570
Reg. v. Hiscox ... 255

Reg. v. Horning........ 245
Reg. v. Hornsea........ 631
Reg. v. Howard........ 499
Reg. v. Jim Sing........255, 266, 279, 540
Reg. v. Johnston........421, 502
Reg. v. Keefe........ 250
Reg. v. Kershaw........ 4
Reg. v. Kirk........ 103
Reg. v. Langley........ 552
Reg. v. Levy........263, 538, 554
Reg. v. Marshall........ 542
Reg. v. Martin........ 474
Reg. v. Mayor, etc., of Eastbourne.. 412
Reg. v. McGauley........ 309
Reg. v. McMillan........ 251
Reg. v. Mee Wah........264, 277
Reg. v. Mission........396, 413
Reg. v. Nunn........ 474
Reg. v. On Hing........ 500
Reg. v. Osler........ 421
Reg. v. Owens........ 94
Reg. v. Perth........ 258
Reg. v. Phillips........ 540
Reg. v. Pipe........263, 510
Reg. v. Plunket........ 570
Reg. v. Preston........ 551
Reg. v. Rankin........ 570
Reg. v. St. Paul........ 631
Reg. v. Shaw........ 247
Reg. v. Smith........ 541
Reg. v. Victoria........264, 277
Reg. v. Wason........ 245
Reg. v. Webster........266, 502, 528
Reg. v. Wilson........ 551
Reg. v. Wismer........ 574
Reg. v. Yorkville........ 643
Reg. ex rel. Adamson v. Boyd....93, 104
Reg. ex rel. Armor v. Coste........ 103
Reg. ex rel. Arnott v. Marchant........ 103
Reg. ex rel. Black v. Campbell..133, 169
Reg. ex rel. Bland v. Figg........96, 97
Reg. ex rel. Boyes v. Detlor........93, 94
Reg. ex rel. Burnham v. Hagerman........91, 190
Reg. ex rel. Carroll v. Beckwith.... 53
Reg. ex rel. Cavanagh v. Smith........ 332
Reg. ex rel. Coleman v. O'Hare........ 103
Reg. ex rel. Davis v. Carruthers........ 97
Reg. ex rel. Doran v. Haggart........ 94
Reg. ex rel. Duncan v. Laughlin........ 194
Reg. ex rel. Ferris v. Iler........ 97
Reg. ex rel. Ferris v. Speck........ 91
Reg. ex rel. Fluett v. Gauthier....101, 102
Reg. ex rel. Ford v. McRae........ 103
Reg. ex rel. Francis v. Young........ 53
Reg. ex rel. Hall v. Gowanlock........ 191
Reg. ex rel. Haner v. Roberts........ 103
Reg. ex rel. Harding v. Bennett........ 106
Reg. ex rel. Hill v. Betts........ 103
Reg. ex rel. Horan v. Evans........ 54
Reg. ex rel. Joanisse v. Mason........ 90
Reg. ex rel. Lee v. Gilmour........ 106
Reg. ex rel. Mack v. Manning....103, 106
Reg. ex rel. Matson v. Butler........ 192
Reg. ex rel. McGuire v. Birkett....97, 103
Reg. ex rel. McLean v. Watson........ 103
Reg. ex rel. McMullen v. DeLisle.... 97
Reg. ex rel. Mitchell v. Davidson........ 197
Reg. ex rel. Moore v. Miller........ 101
Reg. ex rel. Padwell v. Stewart........ 105
Reg. ex rel. Patterson v. Clarke........ 106
Reg. ex rel. Preston v. Touchburn........132, 167
Reg. ex rel. Ranton v. Counter........ 105
Reg. ex rel. Richmond v. Tegart........ 93
Reg. ex rel. Rollo v. Beard........93, 97
Reg. ex rel. Ross v. Bastill........ 106
Reg. ex rel. Ross v. Rastal........ 103
Reg. ex rel. St. Louis v. Reaume........ 190
Reg. ex rel. Stevenson v. Blanchard 194
Reg. ex rel. Stock v. Davis........ 105
Reg. ex rel. Thompson v. Dinnin........ 55
Reg. ex rel. Walker v. Mitchell........ 131
Reg. ex rel. Watterworth v. Buchanan........ 167
Reid v. Hamilton........ 258
Reid v. Sault Ste. Marie........269, 633
Reid v. Toronto........ 620
Reneault v. Ganon........ 185
Renwick v. Vermillion........29, 30
Restigouche, Rex v., ex p. Murchie 95
Revell and Oxford, Re........ 302
Rex v. Aitcheson........ 527
Rex v. Bickerton........ 388
Rex v. Broad........ 47
Rex v. Brown........ 365
Rex v. Burrell........ 177
Rex v. Campbell........ 412
Rex v. Can. Pacific Co........ 508
Rex v. Can. Pacific Lumber Co........ 362
Rex v. Carslake Hotel Co........ 367
Rex v. Case; Re Denison........ 412
Rex v. Chisholm........ 245
Rex v. Condon........365, 374
Rex v. Courtney........355, 368
Rex v. Diblee; Ex p. Smith........ 279
Rex v. Dimock........ 280
Rex v. Doll........ 273
Rex v. Dominion Bowling & Athletic Club........ 548

Rex v. Durocher 691
Rex v. Faux 285
Rex v. Forshaw 264, 279
Rex v. Frankfeldt 275, 514
Rex v. Frontenac Gas Co 407
Rex v. Geddes 551
Rex v. Gloucester, Ex parte Murchie 95
Rex v. G.T.R. Co 508
Rex v. Halifax 414
Rex v. Halifax, Re Stevens 240
Rex v. Hamilton 543, 544
Rex v. Hayes 365
Rex v. Hearn 359
Rex v. Hunting 374
Rex v. Inverness R. & C. Co 363
Rex v. Kay, Ex parte Le Blanc 248
Rex v. Keenan 490
Rex v. Laforge 553
Rex v. Landulph 631
Rex v. Larwood 177
Rex v. Laughton 247
Rex v. Lee 246
Rex v. Liverpool, etc., R. Co 371
Rex v. Mack 90, 183
Rex v. Macpherson 365, 373
Rex v. Maher 496, 510
Rex v. Manchester 512
Rex v. Manuel 365, 366
Rex v. McArthur 381, 668
Rex v. McDonald 369
Rex v. McGregor 468
Rex v. McLaughlin 388
Rex v. Meehan 412
Rex v. Meyers 551
Rex v. Moncton Land Co 360, 367
Rex v. Moyer 572
Rex v. Murphy 365, 388
Rex v. New Brunswick R. Co 373
Rex v. North Curry 54
Rex v. Nunn, Re Rogers & Nunn 494
Rex v. Ogle 551
Rex v. Pember 551
Rex v. Peters 369
Rex v. Pollock 249
Rex v. Pope 265, 280, 537
Rex v. Power 366
Rex v. Prosterman 541
Rex v. Quong Wing 250
Rex v. Reedy 423
Rex v. Restigouche, Ex parte Murchie 95
Rex v. Richards 358, 365
Rex v. Rowlands 97
Rex v. Roy 366
Rex v. St. Pierre 551
Rex v. Sang Chong 512
Rex v. Sault Ste. Marie 223
Rex v. Schuster; Stark v. Schuster 247, 262
Rex v. Sparks 266, 278
Rex v. Spegelman 473
Rex v. Sung Chong 540
Rex v. Sweeny 248
Rex v. Taylor 475
Rex v. Trudel 360
Rex v. Turner 94, 95
Rex v. Van Norman 542
Rex v. Waldon 247
Rex v. Wilson 361, 369
Rex v. Wolfe 541
Rex v. Woodlock 366
Rex v. Woollatt 513
Rex ex rel. Armstrong v. Garrett 123
Rex ex rel. Band v. McVeity 104
Rex ex rel. Bawkes v. Letherby 177
Rex ex rel. Beck v. Sharp 189
Rex ex rel. Black v. Campbell 169
Rex ex rel. Boyce v. Ellis 187, 198
Rex ex rel. Boyce v. Porter 187, 198
Rex ex rel. Burnham v. Hagerman 190
Rex ex rel. Carr v. Cuthbert 193
Rex ex rel. Cavers v. Kelly 167
Rex ex rel. Craig v. Ego 195
Rex ex rel. Fitzgerald v. Stapleford 98, 117, 201
Rex ex rel. Froehlich v. Woeller 185
Rex ex rel. Gardhouse v. Irwin 95, 903
Rex ex rel. Gunder Bjorge v. Zellickson 173, 187
Rex ex rel. Harding v. Bennett 90
Rex ex rel. Hogan v. Jollinette 178, 180
Rex ex rel. Ingoldsby v. Spiers 195
Rex ex rel. Ivison v. Irwin 161, 168
Rex ex rel. Jamieson v. Cook 93
Rex ex rel. La Fleche v. Sheppard 99
Rex ex rel. Livingston v. East 97
Rex ex rel. Livingston v. McNamara 97, 102
Rex ex rel. Macklin v. Thompson 168
Rex ex rel. Macnamara v. Heffernan 103
Rex ex rel. Martin v. Jacques 102, 180
Rex ex rel. Martin v. Watson 122
Rex ex rel. McDonald v. Robertson 98
Rex ex rel. McFarlane v. Balment 199
Rex ex rel. McFarlane v. Coulter 187
Rex ex rel. McLeod v. Bathurst 186
Rex ex rel. McMullen and Caradoc 575
Rex ex rel. Milligan v. Harrison 113
Rex ex rel. Mitchell v. McKenzie 93, 104
Rex ex rel. Mooney v. Robertson 198
Rex ex rel. Moore v. Hamill 342

Rex ex rel. Morton v. Roberts........91, 177, 183, 188
Rex ex rel. Morton v. Rymal..........177, 183, 188
Rex ex rel. O'Donnell v. Broomfield..........93, 194
Rex ex rel. O'Shea v. Letherby..........96, 97, 102, 122, 193
Rex ex rel. Park v. Street..........187, 189
Rex ex rel. Payne v. Chew.......... 186
Rex ex rel. Pillar v. Bourdeau.......... 122
Rex ex rel. Ponsford v. Roberts..189, 190
Rex ex rel. Roberts v. Ponsford.......... 167
Rex ex rel. Robinson v. McCarty..93, 194
Rex ex rel. Sabourin v. Berthiaume..........186, 189, 193, 206
Rex ex rel. Sharpe v. Beck..........87, 90
Rex ex rel. Slater v. Homan..........97, 188
Rex ex rel. Smith v. Shick.......... 99
Rex ex rel. Snider v. Richardson.......... 183
Rex ex rel. Sovereen v. Edwards..52, 140
Rex ex rel. Sullivan v. Church.......... 87
Rex ex rel. Tobey v. McDonald.......... 117
Rex ex rel. Tolmie v. Campbell..138, 186
Rex ex rel. Tuttle v. Quesnel.......... 186
Rex ex rel. Walton v. Freeborn..120, 188
Rex ex rel. Warner v. Skelton....187, 190
Rex ex rel. Warr v. Walsh.......... 167
Rex ex rel. White v. McClay.......... 193
Rex ex rel. Yates v. Lawrence.......... 169
Rex ex rel. Zimmerman v. Steele.......... 93
Rey v. Montreal.......... 42
Reynolds v. Windsor.......... 29
Rhodes v. Perusse.......... 578
Ricard v. Grand 'Mere.......... 322
Rice v. Whitby..........612, 622
Rich v. Melancthon Board of Health 412
Richards, Rex v..........358, 365
Richardson and Board of Comm'rs of Police of Toronto..........302, 406
Richardson v. Methley School Board 174
Richardson and Toronto, Re.......... 384
Richardson v. Urban Mutual Fire Insurance Co.......... 7
Richelieu v. Montreal & St. Lawrence L. & P. Co..........565, 652
Richmond, Reg. ex rel., v. Tegart.... 93
Ricket v. Metropolitan R. Co......376, 378
Ricketts v. Markdale.......... 610
Rickey, Re.......... 168
Rickey v. Toronto..........45, 646
Rideout v. Howlett..........574, 576
Riendeau v. Dudevoir.......... 199
Riopelle v. Montreal.......... 476
Ritz and New Hamburg, Re.......... 304
Roach v. Colborne.......... 629
Roach v. Port Colborne.......... 616
Roberts v. Climie.......... 421
Roberts v. Mitchell.......... 488
Roberts v. Port Arthur.......... 27
Roberts, Rex ex rel., v. Ponsford.... 167
Robertson and Colborne, Re..........65, 284
Robertson v. High River.......... 578
Robertson v. Montreal..........418, 639
Robertson v. Toronto..........48, 654
Robidoux v. Brunet.......... 152
Robillard v. Montreal.......... 406
Robillard v. Sloan.......... 98
Robinson v. Barton-Eccles.......... 4
Robinson v. Dereham.......... 616
Robinson v. Havelock.......... 28
Robinson, Rex ex rel., v. McCarthy..........93, 194
Robinson and St. Thomas, Re.......... 281
Robitaille v. Quebec.......... 172
Roche v. Ryan.......... 580
Rochford v. Brown.......... 416
Rochon v. Montreal.......... 36
Rodd v. Essex.......... 431
Rogers, Re..........420, 670
Rogers and McFarland, Re..........57, 570
Rogers v. Petrolia..........26, 614
Rogers v. Toronto..........9, 48
Rogers v. Toronto Public School Bd 44
Rokingham v. Leith.......... 105
Rollo, Reg. ex rel., v. Beard..........93, 97
Rolston v. St. John.......... 605
Roman Catholic Bishop of New Westminster v. Vancouver.......... 382
Rose v. Ochre River.......... 33
Rose v. West Wawanosh.......... 421
Ross v. East Nissouri..........479, 580
Ross v. London..........13, 14
Ross, Reg. ex rel., v. Bastill.......... 106
Ross, Reg. ex rel., v. Rastal.......... 103
Rosthern Election Petition, Hamm v. Bashford.......... 205
Rouleau v. Pouliot.......... 54
Rouleau v. Ste. Lambert.......... 174
Roulier v. Magog.......... 37
Rounds v. Stratford.......... 613
Rousseau v. Pelletier.......... 184
Rousseau v. Ste. Nicholas..........617, 651
Rowe v. Leeds and Grenville....620, 633
Rowe v. Rochester.......... 26
Rowland and Collingwood, Re.......... 278
Rowland v. Edmonton.......... 575
Rowlands, Rex v.......... 97
Roy v. Martineau..........185, 200
Roy v. Montreal.......... 45

Roy, Rex v.... 366
Roy v. St. Anselme.... 305
Roy v. St. Gervais.... 311
Roy v. St. Louis du Mile-End.... 40
Royal Insurance Co. v. Montreal.... 40, 255, 280, 410
Rudd v. Arnprior.... 27
Ruddell v. Garrett; Re Morden Election.... 90
Ruddy v. Milton.... 28
Rushton v. Galley.... 629
Ryan, Re.... 168
Ryan and McCallum, Re.... 494
Rylands v. Fletcher.... 484, 613

Saanich v. French.... 549
Sabourin, Rex ex rel., v. Berthiaume.... 186, 189, 193, 206
St. Andre-Avellin v. Ripon.... 561
St. Boniface By-law, Re.... 308
St. Catharines and County of Lincoln, Re.... 73
St. Charles des Grondines v. Portneuf.... 563
St. Christophe v. Arthabaska.... 204, 564
St. Denis v. Mercier.... 184
St. Denis Parish v. St. Denis Village 74
St. Francois Xavier de Brompton v. Salois.... 578
St. Ignace du Coteau Landing v. Soulanges.... 566
St. John v. Barker.... 409
St. John v. Campbell.... 605
St. John v. Christie.... 640
St. John v. Pattison.... 34
St. John v. St. Jacques le Mineur.... 559
St. Johns v. Malleur.... 410
St. Joseph de Chambly v. Arbec.... 559
St. Laurent v. Roy.... 691
St. Louis du Ha! Ha! v. Thomas.... 563
St. Louis v. McCray.... 606
St. Louis, Reg. ex rel., v. Reaume.. 190
St. Paul v. Cook.... 475
St. Paul, Reg. v.... 631
St. Pierre, Rex v.... 551
St. Pierre v. St. Henri.... 500
St. Thomas v. Credit Valley R. Co.... 447
St. Vincent v. Greenfield.... 408, 570
St. Vital Municipal Election, Re; Tod v. Mager.... 121, 199, 576
Ste. Agathe des Monts v. Reid.... 409
Ste. Ambroise v. Godin.... 265, 552
Ste. Aubin v. St. Jerome.... 311
Ste. Julie v. Malo.... 410
Ste. Justine de Newton v. Leroux.... 560, 561
Ste. Louise v. Chouinard.... 49, 661
Ste. Pierre de Broughton v. Marcoux.... 265, 306
Salois v. St. Francois du Lac.... 37
Salter, Re.... 133
Salter and Beckwith, Re.... 168
Salter and Local Improvement Dist. No. 186.... 173, 290
Sams and Toronto, Re.... 95
Samson v. Montreal.... 267, 418, 495, 496
Sanderson and Sophiasburgh, Re.... 306, 579
Sandwich and Sandwich, Windsor & Amherstburg R. Co., Re.... 269
Sang Chong, Rex v.... 512
Sangster v. Goderich.... 615
Sault Ste. Marie Election Case.... 206
Sault Ste. Marie, Rex v.... 223
Saunby v. London Water Commissioners.... 386, 393, 394
Saunders v. Toronto.... 43
Sawyer v. Kropp.... 53
Schambier v. Halifax South.... 216
Schmidt v. Berlin.... 462
Schneider v. Petelle.... 101, 174
Schofield and Toronto, Re.... 608
Schooley and Lake Erie and Northern R. Co.... 357, 361
Schumacher, Re.... 140, 168
Schumacher and Chesley, Re.... 294
Schuster, Rex v.; Stark v. Schuster.... 247, 262
Scott, Re.... 391, 399
Scott v. Barron.... 685
Scott v. Hydro-Electric Commission of Hamilton.... 16, 44
Scott v. Peterborough.... 318
Scott v. Quebec.... 624, 639
Scott and Tillsonburg, Re.... 302, 443
Scottish American Invest. Co. v. Elora.... 442
Scottish Ontario v. Toronto.... 41, 492
Scrimger v. Galt.... 28
Scriver v. Lowe.... 630
Secord v. Edmonton.... 363
Seguin and Hawkesbury, Re.... 667
Selkirk v. Windsor E. & L.S.R.W. Co.... 7
Sells and St. Thomas, Re.... 313
Senecal v. Beauharnois.... 561
Senior v. Metropolitan R. Co.... 384
Service, Re.... 169
Sevigny v. St. David.... 411
Sexsmith v. Montgomery.... 183
Seybold v. Montreal.... 638
Seymour v. Maidstone.... 41

Seymour v. Plant.... 332
Sharp, Re 168, 169
Sharpe, Rex ex rel., v. Beck....87, 90
Shaw and Portage La Prairie, Re..
....170, 171, 289, 300
Shaw, Reg. v.... 247
Shaw and St. Thomas, Re.... 309
Shaw v. Winnipeg.... 43
Shawinigan v. Shawinigan.... 256
Sheley and Windsor, Re.... 302
Shelly, Re....246, 275
Sherbrooke v. Short.... 627
Sherwood v. Hamilton....614, 628
Shewfelt v. Kincardine.... 227
Shipley v. Fifty Associates....483, 487
Shoal Lake, Re....170, 171
Shorey v. Cook.... 577
Shrimpton v. Winnipeg.... 417
Sidney v. North-Eastern R. Co.... 359
Sigouin v. Viau.... 93
Sills v. Lennox....15, 456
Silsby v. Dunnville....15, 458
Simcoe v. Burton.... 227
Simpson and Caledonia, Re....49, 269
Simpson v. Ready.... 101
Sinclair, Re.... 167
Skelton v. Thompson....487, 488
Skewis v. Kamloops.... 621
Slater and Ottawa, Re.... 389
Slater, Rex ex rel., v. Homan....97, 188
Slattery v. Naylor.... 47
Sleeth v. St. John; Gordon v. St.
John 369
Slinn v. Ottawa 26
Smiley v. Oakland.... 622
Smith v. Ancaster.... 421
Smith v. Baskerville.... 161
Smith v. Bertie....609, 699
Smith v. Carey.... 164
Smith v. Chorley Dist. Council.... 412
Smith v. Eldon.... 27
Smith, Ex parte.... 279
Smith and North Cypress, Re.... 289
Smith and Plympton, Re.... 398
Smith v. Raleigh....312, 417
Smith, Reg. v.... 541
Smith, Rex ex rel., v. Shick.... 99
Smith and Toronto, Re.... 251
Smith v. Vancouver.... 617
Snider, Rex ex rel., v. Richardson 183
Society of Que. Schools for Poor
Children v. Montreal.... 277
Sombra v. Moore.... 650
Song Lee and Edmonton, Re.... 522
Sorel v. Quebec Southern R. Co.... 447
Soulsby v. Toronto.... 462
Southampton and Tp. of Saugeen,
Re Corp. of.... 74
South of Ireland Colliery Co. v.
Waddle 6, 7
South Oxford Election Case, The....
....148, 149, 150
South Perth Election Case, Re....
....114, 115, 151, 298
South Twelfth Street, Re.... 360
South Vancouver v. Rae....10, 110
South Wentworth Election Case.... 151
Sovereen, Rex ex rel., v. Edwards..52, 140
Sparks, Rex v....266, 278
Speakman v. Calgary....10, 239, 270, 460
Spedding v. Montreal.... 618
Spegelman, Rex v.... 473
Spencer v. Farthing.... 90
Stalker v. Dunwich 460
Standard Life v. Tweed.... 338
Starr v. Mayor, etc., of Exeter.... 177
Stebbing v. Metropolitan Board of
Works 358
Steeves v. Moncton....349, 418
Stephens v. Calgary....238, 252
Stephens v. Flemming....152, 203
Stephens v. Hurteau.... 98
Stephenson v. Cowan.... 418
Stevens v. Chatham.... 636
Stevenson, Reg. ex rel., v. Blanchard 194
Steves v. South Vancouver.... 31
Stewart and St. Mary's, Re.... 282
Stiles v. Galinski.... 262
Stillwell v. Houghton.... 615
Stock, Reg. ex rel., v. Davis.... 105
Stoddart v. Owen Sound....48, 133, 169
Stokes-on-Trent Borough Council v.
Cheshire County Council.... 55
Stoney Plain Municipal Election, Re 122
Stormont Election Case, The....53, 149
Stott v. North Norfolk.... 33
Strang v. Aran....607, 616, 646
Stuart v. Napierville....214, 415, 446
Sturmer, Re....54, 168, 198, 294
Sturmer and Beaverton, Re.... 307
Styles v. Victoria 663
Sullivan, Rex ex rel., v. Church.... 87
Summers v. York.... 614
Sung Chong, Rex v.... 540
Sutton v. Dundas....27, 408, 651
Swan River Local Option By-law, Re 297
Swayzie v. Montague.... 26
Sweeny, Rex v.... 248
Sweetman and Gosfield, Re.... 309
Sweinsson and Charleswood, Re.... 401

Swift Current v. Leslie..... 401
Sydney v. Bourke..... 634
Sydney v. Chappel..... 11
Symonds v. Rex..... 373

Tai Sing v. Maguire.....263, 277
Tait v. New Westminster.....620, 653
Talbot and Peterborough, Re.....278, 547
Tanton v. Charlottetown..... 418
Taprell v. Calgary..... 312
Tate and Toronto, Re.....381, 668
Taylor and Belle River, Re.....382, 663
Taylor v. Collingwood..... 27
Taylor v. Gage.....256, 258, 608, 679
Taylor and Martyn, Re..... 825
Taylor v. Portage La Prairie.....617, 653
Taylor v. Revelstoke..... 13
Taylor, Rex v..... 475
Taylor and Winnipeg, Re.....254, 617, 626
Teitelbaum v. Morris..... 33
Tetley v. Vancouver..... 238
Tetreau v. Beaudry..... 186
Therriault v. Notre Dame du Lac..... 561
Therriault v. St. Alexandre.....305, 561
Therrien v. Deschambault..... 100
Therrien v. St. Paul.....253, 691
Therrien v. Tisdale..... 121
Thibault v. Montreal..... 12
Thomas' License, Re..... 242
Thomas v. North Norwich.....615, 628
Thomas v. Sutters..... 245
Thomas v. Winnipeg..... 43
Thompson v. Chatham..... 9
Thompson Local Option By-law, Re..
..... 139, 171
Thompson v. M'Lean..... 81
Thompson, Reg. ex rel., v. Dinnin.. 55
Thompson v. Sandwich..... 459
Thompson v. Yarmouth.....8, 416
Thorsteinson v. North Norfolk..... 34
Three Rivers v. Banque du Peuple.. 447
Till v. Oakville.....28, 45
Tobey, Rex ex rel., v. McDonald..... 117
Tod v. Mager; Re St. Vital Municipal Election.....121, 199
Todd v. Meaford..... 9
Todd v. Victoria..... 793
Tolmie, Rex ex rel., v. Campbell..138, 186
Tompkins v. Brockville..... 499
Toms v. Whitby..... 614
Tookey v. Edmonton..... 275
Toronto, Re City of..... 574
Toronto v. Bell Telephone Co..... 477
Toronto v. Consumers' Gas Co..... 355
Toronto v. Delaplante..... 533
Toronto v. Ford..... 533
Toronto v. Foss..... 530
Toronto v. Lorsch..... 408
Toronto v. Peel..... 653
Toronto v. Rogers..... 500
Toronto v. Ryan..... 494
Toronto v. Stewart..... 533
Toronto v. Virgo.....254, 540
Toronto v. Wheeler.....261, 533
Toronto v. Williams..... 533
Toronto Electric Light Co. v. Toronto.....8, 269, 467
Toronto Junction v. Christie..... 384
Toronto and Niagara Power Co. v. North Toronto..... 478
Toronto and Niagara Power Co. and Webb, Re..... 391
Toronto Public School Board and Corp. of Toronto.....103, 412
Toronto Railway Co. v. Toronto..... 345
Toronto Street R. Co. v. Dollery..... 611
Toronto v. Toronto Elec. Light Co. 8
Tougas v. Montreal..... 577
Touhey v. Medicine Hat.....601, 630
Tourigny v. St. Paul de Chester..... 690
Tourville v. St. Francois de Salles..... 564
Traversy v. Gloucester..... 583
Traves v. Nelson.....420, 421
Tremblay v. Chicoutimi..... 65
Tremblay v. Montreal..... 305
Tremblay v. Peterborough..... 616
Tremblay v. Quebec..... 42
Trudel, Rex v..... 360
Trustees of the Harbour of Dundee v. Nicol..... 6
Tuck v. Victoria..... 240
Turnbull and Pipestone, Re.....397, 398
Turner v. Eustis..... 615
Turner, Rex v.....94, 95
Turner v. York..... 26
Tuttle, Rex ex rel., v. Quesnel..... 186
Tweeddale v. Calgary.....601, 604
Tweedie v. Rex.....361, 362
Twin City Ice Co. v. Ottawa..... 390
Two Mountains Election Case..... 120
Tynemouth Corp. and Duke of Northumberland.....359, 362, 363, 379

United Trust v. Chilliwack..... 18
Underwood v. Waldron.....484, 485
United Buildings Corp. v. Vancouver 260
Upper Canada College v. Toronto..... 819
Upton v. Brown..... 246
Usher and North Toronto, Re.....372, 405

Vallieres v. Montreal.......... 504
Vallieres v. St. Henri de Lauzon.... 50
Vancouver v. Cummings..........604, 629
Vancouver Incorporation Act, Re.... ....264, 282
Vanderberg v. Markham.......... 27
Vandyke, Re..........167, 288
Van Egmond v. Seaforth.......... 26
Van Norman, Rex v.......... 542
Vansickler v. McKnight.......... 7
Vashon and East Hawkesbury, Re 108, 259
Vasilatos v. Victoria.......... 279
Vassar v. Brown.......... 622
Vaudry v. Montreal.......... 606
Vautelet v. Montreal.......... 344
Verdun v. Grand Trunk R. Co.......... 371
Verner v. Toronto.......... 347
Vernon v. Smith's Falls.......... 239
Vespra v. Cook..........621, 652
Vezina v. Reg.......... 365
Viau v. Maisonneuve.......... 338
Victoria v. Belyea..........252, 279
Victoria v. Lang.......... 604
Victoria v. Meston.......... 255
Victoria v. Patterson.......... 604
Victoria v. Peterborough.......... 596
Victoria, Reg. v..........264, 277
Victoria v. Silver Spring Brewery.... 575
Victoriaville v. Dubuc.......... 109
Vidal v. John D. Ivey Co.......... 619
Villani v. Montreal.......... 618
Vinet v. St. Louis de Gonzague.......... 253
Vivian and Whitewater, Re..........285, 304
Vonda and Mantyka, Re.......... 347
Von Mackensen v. Surrey.......... 604

Waite's Executors v. Inland Revenue Comm'rs 371
Walcot v. Botfield.......... 55
Waldon, Rex v.......... 247
Walker, Reg. ex rel., v. Mitchell.......... 131
Walker and S. Vancouver, Re....396, 413
Walkerville v. Walkerville L. & P. Co. 478
Wall and Ottawa, Re.......... 169
Wallace v. Fleming; Re Brandon Election 171
Wallace v. Ottawa and Gloucester Road Co.......... 625
Wallace v. Windsor..........616, 641
Waller v. Sarnia.......... 624
Wallis v. Assiniboia.......... 604
Walsh v. Mead.......... 483
Walsh v. St. Anicet.......... 359
Walton, Rex ex rel., v. Freeborn..120, 188
Walton v. York.......... 614
Wannamaker v. Green.......... 420
Ward v. Owen Sound.......... 416
Ward v. Toronto.......... 239
Ward v. Welland.......... 313
Warminton v. Heaton.......... 577
Warner-Quinlan Asphalt Co. v. Montreal 418
Warner, Rex ex rel., v. Skelton.......... 187
Warr v. London County Council.......... 354
Warr, Rex ex rel., v. Walsh.......... 167
Warwick v. Simcoe.......... 227
Wason, Reg. v.......... 245
Water Comm'rs of Windsor v. Canada Southern R. Co.......... 72
Waterous and Brantford, Re......259, 663
Waterous Engine Works Co. v. Palmerston 15, 17, 19, 458
Watson v. Kincardine.......... 573
Watson v. Maze.......... 524
Watson and Toronto, Re....375, 400, 403
Watt v. Drysdale.......... 480
Watterworth, Reg. ex rel., v. Buchanan 167
Way v. St. Thomas.......... 6
Weber v. Berlin.......... 26
Webster, Reg. v..........266, 502, 528
Weeks v. Vegreville..........10, 479
Weir and Calgary, Re..........259, 663
Wells v. Kingston-upon-Hull.......... 7
Welsh v. St. Catharines.......... 24
Wentworth Election Case, The.......... 149
Wentworth v. Hamilton 62, 77
Wentworth v. W. Flamborough..596, 597
Wenzler v. McCotter.......... 653
West v. Bristol Tramways Co.......... 24
West Elgin Case..........147, 148, 151, 152
West Huron Election Case, The...... ....147, 149, 151
West Lorne Scrutiny, Re..........161, 162
West v. Montreal 219, 639
West Nissouri Continuation School.. ....222, 412, 413
West Vancouver v. Ramsay.......... 664
Weston v. Middlesex.......... 620
Wheatley v. Charlottetown.......... 40
Whitby v. Grand Trunk R. Co.......... 447
White v. Louise..........668, 671
White, Rex ex rel., v. McClay.......... 193
White and Toronto, Re.......... 398
Whiteley v. Barley.......... 97
Wickett v. Graham.......... 557
Wigle v. Gosfield South.......... 28
Wigle v. Kingsville..........268, 284

Wilder v. Montreal ... 248, 509, 552
Wilkes v. Saskatoon ... 39
Wilkins, Re Bessie B. ... 397
Williams and Brampton, Re ... 52
Williams v. Cornwall ... 355
Williams, Ex parte, Re Dickie ... 95
Williams v. North Battleford ... 621
Williams v. Raleigh ... 377
Williams v. Richards ... 39
Williamson v. Elizabethtown ... 14
Wilshire v. St. Louis du Mile-End ... 35
Wilson, Re ... 168, 276
Wilson v. Ingersoll ... 10, 223, 276
Wilson v. Manes ... 164
Wilson v. Middlesex ... 420
Wilson, Rex v. ... 361, 369, 551
Wilson v. West Hartlepool H. & R. Co. ... 7
Wiltshire v. Surrey ... 338
Winnipeg and Battaglia, Re ... 366
Winnipeg v. Brock ... 310, 664
Winnipeg v. Cauchon ... 346
Winnipeg Elec. R. Co. v. Winnipeg 478
Winnipeg v. Toronto General Trusts Corp. ... 389, 393, 394
Winslow v. Dalling ... 475, 568, 662
Winterbottom v. Board of Comm'rs of Police of London ... 41
Wishart v. Winnipeg ... 41
Wismer, Reg. v. ... 574
Wolfenden and Grimsby, Re ... 448
Wolfe, Rex v. ... 541
Wolff v. Kehoe ... 683
Wong Ling v. Montreal ... 618
Wood, Gundy & Co. v. South Vancouver ... 277
Wood v. Hamilton ... 28
Wood and Winnipeg, Re ... 262, 524
Woodlock, Rex v. ... 366
Woodstock v. County of Oxford ... 75
Woodstock v. Woodstock Auto. Mfg. Co. ... 447
Woodward v. Sarsons ... 146, 149, 150, 153
Woodward v. Vancouver ... 24
Woollatt, Rex v. ... 513
Woolley v. Kay ... 96, 102
Wright, Re ... 55
Wright and Cornwall, Re ... 556
Wright v. Jarvis ... 542
Wright v. Ottawa and Ottawa Dairy Co. ... 7, 10, 416
Wynn v. Weston ... 160, 168
Wynne v. Dalby ... 113

Yager v. Swift Current ... 401, 407
Yates, Rex ex rel., v. Lawrence ... 169
Yates v. Windsor ... 636
Yeomans and Wellington, Re ... 257, 353
Yorkville, Reg. v. ... 643
Young, Re ... 167, 170
Young v. Bank of Nova Scotia ... 8
Young v. Brandon ... 479
Young v. Bruce ... 615, 639, 640, 642
Young v. Gravenhurst ... 16, 28, 44
Young v. Leamington ... 6, 16, 19
Young v. Stanstead ... 627

Zeats v. Johnston ... 276, 497
Zimmerman, Rex ex rel., v. Steele ... 93

TABLE OF ABBREVIATIONS.

A. & E.	Adolphus and Ellis Reports (English).
A.L.R.	Alberta Law Reports.
A.R.	Appeal Reports (Ontario).
Atl. Rep.	Atlantic Reporter (United States).
Barb.	Barbour's Reports (New York).
B. & C.	Barnewall and Cresswell's Reports (English).
Beav.	Beavan's Reports (English).
B.C.R.	British Columbia Reports.
Cal	California Reports.
Cameron's S.C. Cas.	Cameron's Cases, Supreme Court of Canada.
Can. Cr. Cas.	Canadian Criminal Cases.
C.L.T.	Canadian Law Times.
C.L.T. Occ. N.	Canadian Law Times, Occasional Notes.
Can. Ry. Cas.	Canadian Railway Cases.
Chamb. Reports	Common Law Chambers Reports (Ontario).
C.C.	Civil Code (Quebec).
C.C.P.	Civil Code of Procedure (Quebec).
Coke's Rep.	Coke's Reports (English).
C.B.	Common Bench Reports (English).
C.B.N.S.	Common Bench Reports, New Series (English).
Con. Rule	Consolidated Rules (Ontario).
Cr. Code	Criminal Code (Canada).
Court of Sess. Cas.	Court of Sessions Cases (Scotland).
Cyc.	Cyclopœdia of Law and Procedure.
Dears. C.C.	Dearsley's Reports of Crown Cases (English).
De Gex. J. & S.	De Gex, Jones and Smith's Reports (English).
D.L.R.	Dominion Law Reports.
E.L.R.	Eastern Law Reporter.
E.C.	Election Cases (Canada).
E. & A.	Upper Canada Error and Appeal Reports.
E. & B.	Ellis and Blackburn's Reports (English).
E. & E.	Ellis and Ellis's Reports (English).
Election Cas.	Election Cases (Ontario).
E.R.	English Reports.
Ex.	Exchequer Court Reports (English).
Ex. C.R.	Exchequer Court Reports (Canada).
F. (Ct. Sess.)	Fraser's Court of Sessions Cases (Scotland).
Fed. Rep.	Federal Reporter (United States).
Hodgins' E.C.	Hodgins' Election Cases (Canada).

H. & C.	Hurlstone and Coltman's Reports (English).
H. & N.	Hurlstone and Norman's Reports (English).
Ir. R.	Irish Reports.
J.P.	Justices of the Peace Reports (English).
L.J. Ch.	Law Journal, Chancery (English).
L.J.C.P.	Law Journal, Common Pleas (English).
L.J. Ex.	Law Journal, Exchequer (English).
L.J.K.B.	Law Journal, King's Bench (English).
L.J.M.C.	Law Journal, Magistrates' Cases (English).
L.J.P.C.	Law Journal, Privy Council (English).
L.T.	Law Times (English).
L.T.N.S.	Law Times, New Series (English).
Leg. News	Legal News (Quebec).
L.R.A.C.	Law Reports, Appeal Cases (English).
L.R. Ch.	Law Reports, Chancery Appeals (English).
L.R. Ch. (with year)	Law Reports, Chancery (English).
L.R. Ch. D.	Law Reports, Chancery Division (English).
L.R.C.P.	Law Reports, Common Pleas (English).
L.R.C.P.D.	Law Reports, Common Pleas Division (English).
L.R. Exch.	Law Reports, Exchequer (English).
L.R. Exch. D.	Law Reports, Exchequer Division (English).
L.R.H.L.	Law Reports, House of Lords (English).
L.R.K.B.	Law Reports, King's Bench (English).
L.R.Q.B.	Law Reports, Queen's Bench (English).
L.R.Q.B.D.	Law Reports, Queen's Bench Division (English).
Lev.	Levinz' Reports (English).
Mass.	Massachusetts Reports.
M. & W.	Meeson and Welsby's Reports (English).
Mich.	Michigan Reports.
Mod.	Modern Reports (English).
Montreal L.R.	Montreal Law Reports.
Moo. & R.	Moody and Robinson's Reports (English).
N.B.	New Brunswick Reports.
N.H.	New Hampshire Reports.
N.Y.	New York Reports.
N.E. Rep.	North Eastern Reporter (United States).
N.S.	Nova Scotia Reports.
O.L.R.	Ontario Law Reports.
O.R.	Ontario Reports.
O.W.N.	Ontario Weekly Notes.
O.W.R.	Ontario Weekly Reporter.
Pa. St. or Penn. St.	Pennsylvania State Reports.
Q.L.R.	Quebec Law Reports.
Que. P.R.	Quebec Practice Reports.
Q.R.K.B.	Quebec Reports, King's Bench.

Q.R.Q.B.	Quebec Reports, Queen's Bench.
Q.R.S.C.	Quebec Reports, Superior Court.
R.R.	Revised Reports (English).
R.S.A.	Revised Statutes of Alberta.
R.S.B.C.	Revised Statutes of British Columbia.
R.S.C.	Revised Statutes of Canada.
R.S.M.	Revised Statutes of Manitoba.
R.S.N.B.	Revised Statutes of New Brunswick.
R.S.N.S.	Revised Statutes of Nova Scotia.
R.S.O.	Revised Statutes of Ontario.
R.S.Q.	Revised Statutes of Quebec.
R.S.S.	Revised Statutes of Saskatchewan.
Rev. de Jur.	Revue de Jurisprudence (Quebec).
Rev. Leg.	Revue Legale (Quebec).
R.L.N.S.	Revue Legale, New Series (Quebec).
S.C.R.	Supreme Court of Canada Reports.
S.L.R.	Saskatchewan Law Reports.
Sc. L.R.	Scottish Law Reporter.
Show.	Shower's Reports (English).
T.L.R.	Times Law Reports (English).
Terr. L.R.	Territories Law Reports.
U.C.C.P.	Upper Canada Common Pleas Reports.
U.C.L.J.O.S.	Upper Canada Law Journal, Old Series.
U.C.R.	Upper Canada Queen's Bench Reports.
U.S.	United States Supreme Court Reports.
W.L.R.	Western Law Reporter.
W.N.	Weekly Notes (English).
W.W.R.	Western Weekly Reporter.

CHAPTER 192, R.S.O. 1914.

As Amended by 4 Geo. V. c. 33; 5 Geo. V. c. 34; 6 Geo. V. c. 24, s. 27, and c. 39; and 7 Geo. V. c. 20, s. 7 (2); c. 42; c. 43, s. 2; c. 48, s. 5.

An Act respecting Municipal Institutions.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

1. This Act may be cited as *The Municipal Act*. 3-4 Geo. V. c. 43, s. 1. Short title.

2. In this Act, Interpretation.

(*a*) "Arbitration" shall mean an arbitration under the provisions of this Act. "Arbitration."

(*b*) "Bridge" shall mean a public bridge, and shall include a bridge forming part of a highway or on, over or across which a highway passes. "Bridge."

"Bridge."—The essential purpose of a bridge is to carry a road at a desired height over a river, and its channel, a chasm or the like; that of a culvert to afford a passage for a small stream crossing under the embankment of a railway or highway, or beneath a road where the configuration of the surface does not require a bridge.

A circular concrete pipe with an inside diameter of three feet had been constructed to replace a former bridge about 8 or 10 feet in span, and it was held to be a culvert and not a bridge: County of Dufferin v. County of Wellington (1907), 10 O.W.R. 239.

See also McHardy v. Ellice (1877), 1 A.R. 628 (a stream 30 to 40 feet in width with clearly defined banks held to be a river); North Dorchester v. Middlesex (1889), 16 O.R. 658 (a creek requiring a bridge having a span of 67 feet and another creek requiring a bridge 31 feet 9 inches long were held to be rivers, but a creek where the span was only 9 feet was held not to be a river); and Brady v. Sadler (1888), 16 O.R. 49, 55 (a stream recognized in legislation as a river is a river).

"On, over or across which a highway passes," *e.g.*, where the highway is carried over a railway upon a bridge constructed by a railway company.

"City." "Town." "Village." "Township." "County."

(*c*) "City," "town," "village," "township," and "county" shall respectively mean city, town, village, township or county, the inhabitants of which are a body corporate within the meaning and for the purposes of this Act.

See s. 8.

"County" includes two or more counties united for municipal purposes. See The Interpretation Act, R.S.O. c. 1, s. 29, cl. (*e*).

"Electors."

(*d*) "Electors," when applied to a municipal election, shall mean the persons entitled to vote at a municipal election, when applied to voting on money by-law shall mean the persons entitled to vote on the by-law and when applied to voting on any other by-law or on a resolution or question unless otherwise provided by the Act, by-law, or other authority under which the vote is taken, shall mean municipal electors.

"Highway."

(*e*) "Highway" shall mean a common and public highway, and shall include a street and a bridge forming part of a highway, or on, over or across which a highway passes.

"Land."

(*f*) "Land" shall include lands, tenements, and hereditaments, and any estate or interest therein, and any right or easement affecting them, and land covered with water.

"Local Municipality."

(*g*) "Local municipality" shall mean a city, a town, a village and a township.

"Member."

(*h*) "Member" or "members," referring to a member or members of a Council, shall include the head of the

Council, and a member or members of a Board of Control.

(*i*) "Money by-law" shall mean a by-law for contracting a debt or obligation or for borrowing money. "Money by-law."

(*j*) "Municipal Board" shall mean Ontario Railway and Municipal Board. "Municipal Board."

(*k*) "Municipal electors" shall mean the persons entitled to vote at a municipal election. "Municipal electors."

(*l*) "Municipality" shall mean a locality, the inhabitants of which are incorporated. 3-4 Geo. V. c. 43, s. 2, cls. (*a-l*). "Municipality."

See s. 8.

(*m*) "Population" shall mean population as determined by the last preceding census taken under the authority of the Parliament of Canada, or under a by-law of the Council, or by the last preceding municipal enumeration by the assessor whichever shall be the latest, [or by such means as the Municipal Board may direct]. 3-4 Geo. V. c. 43, s. 2, cl. (*m*); 5 Geo. V. c. 34, s. 1. "Population."

The words in brackets were added by 5 Geo. V. c. 34, s. 1, to cover cases in which the population cannot be ascertained by the means mentioned in the clause as it stood before the amendment; *e.g.*, the incorporation of a town in unorganized territory, under s. 19.

"Municipal enumeration" is provided for by The Assessment Act, R.S.O. c. 195, s. 22 (3), col. 26.

(*n*) "Prescribed" shall mean prescribed by or under the authority of this Act. "Prescribed."

(*o*) "Published" shall mean published in a newspaper in the municipality to which what is published relates, or which it affects, or if there is no newspaper published in the municipality, in a newspaper published in an adjacent or neighbouring municipality; and "publication" shall have a corresponding meaning. "Published." "Publication."

"Separated town."

(*p*) "Separated town" shall mean town separated for municipal purposes from the county in which it is situate.

The Consolidated Municipal Act, 1903, 3 Edw. VII. c. 19, s. 27, provided for separating for municipal purposes a town having at least 5,000 inhabitants from the county of which it formed part. This provision was repealed by 3-4 Geo. V. c. 43, s. 537, with the result that a town can only be separated by an Act of the Legislature.

"Supreme Court."

(*q*) "Supreme Court" shall mean Supreme Court of Ontario.

"Township."

(*r*) "Township" shall include a union of townships, and a municipality composed of two or more townships.

"Two-thirds vote."

(*s*) "Two-thirds vote" shall mean the affirmative vote of two-thirds of the members of a Council present at a meeting thereof.

"Unorganized territory."

(*t*) "Unorganized territory" shall mean that part of Ontario without county organization.

"Urban municipality."

(*u*) "Urban municipality" shall mean and include a city, a town, and a village. 3-4 Geo. V. c. 43, s. 2, cls. (*n*-*u*).

This Interpretation section does not apply where the meaning given to a word, expression or clause is inconsistent with the intention or object of the Act, or with the context: see The Interpretation Act, R.S.O. c. 1, ss. 2, 3, but with this limitation it applies to all Acts relating to municipal matters. See Ib. s. 31.

"Shall mean," "shall include."—There is an important difference between the meaning of these phrases. "Shall include" or "shall extend to" is more properly used in the sense of extension, not of definition, "Shall mean" has rather the sense of exclusive definition or exhaustive enumeration: per Erle, J., in Reg. v. Kershaw (1856), 6 E. & B. 999, 1007; see also Robinson v. Barton-Eccles L.R. (1883), 8 A.C. 798.

When evidence may be taken in shorthand.

3. (1) Where under the provisions of this Act evidence is taken orally before a Special Examiner or a Judge he may direct that the same be taken in shorthand by a stenographic reporter.

Fees of reporter, how paid.

(2) The fees of the stenographic reporter including those for the transcribing of his notes shall be paid by the party on whose behalf the evidence is taken, and the same shall form part of the

costs of the proceedings in which the evidence is taken. 3-4 Geo. V. c. 43, s. 3.

This section was first enacted in The Municipal Act, 1913. The appointment of special examiner is provided for by The Judicature Act, R.S.O. c. 56, s. 98, and stenographic reporters by s. 97 of the same Act.

Registration in office of land titles.

Rev. Stat. c. 126.

4. Where registration in a registry office is prescribed or provided for by this Act it shall mean where *The Land Titles Act* is applicable, registration in the office of the Master or Local Master of Titles of the locality in which the land is situate. 3-4 Geo. V. c. 43, s. 4.

When occupant deemed to be owner.

5. A person in the actual occupation of land under an agreement with the owner for the purchase of it shall be deemed to be the owner, and the unpaid purchase money shall be deemed to be an encumbrance on the land. 3-4 Geo. V. c. 43, s. 5.

This section is new, and was enacted in consequence of the decision of the Court of Appeal in In re Flatt and the United Counties of Prescott and Russell (1890), 18 A.R. 1 (followed in In re Dale and the Township of Blanchard (1910), 21 O.L.R. 497; (1911), 23 O.L.R. 69), in which it was held that until the conditions upon which the conveyance is to be made are performed and the purchaser becomes entitled to the conveyance he does not become the equitable owner of the land or his vendor a trustee for him.

Power to acquire includes expropriation.

6. Where power to acquire land is conferred upon a municipal corporation by this or any other Act, unless otherwise expressly provided, it shall include the power to acquire by purchase or otherwise and to enter on and expropriate. 3-4 Geo. V. c. 43, s. 6.

This section is new. Before it was enacted the power to expropriate existed only in cases in which it was expressly conferred. As to expropriation see ss. 321-331.

Special Acts not affected.

7. Except where otherwise expressly provided, this Act shall not affect the provisions of any special Act relating to a particular municipality. 3-4 Geo. V. c. 43, s. 7.

This would have been the case had the section not been enacted, for as a general rule the provisions of a general Act do not override those of a special Act: see Halsbury's Laws of England, vol. 27, par. 321.

See also Way v. St. Thomas (1905), 12 O.L.R. 240; In re Bell-Irving and Vancouver (1893), 4 B.C.R. 228, 300; McGuire v. Waterloo (1906), Q.R. 29, S.C. 189.

Inhabitants of municipalities to be bodies corporate.

8. The inhabitants of every county, city, town, village, and township shall be a body corporate for the purposes of this Act. 3-4 Geo. V. c. 43, s. 8.

CAPACITY OF A MUNICIPAL CORPORATION TO CONTRACT AND ITS LIABILITY ON CERTAIN CONTRACTS.

A corporation is as fully capable of binding itself by any contract as an individual except as to those contracts which, from the nature or object of the corporation or from the express or implied terms of its constitution, it is prohibited from making: Halsbury's Laws of England, vol. 8, par. 839.

This statement is in substance what is enacted by The Interpretation Act, R.S.O., c. 1, s. 27:

Ashbury v. Riche, L.R. (1875), 7 H.L. 653, London County Council v. Attorney-General, L.R. (1902) A.C. 165, 18 T.L.R. 298; Trustees of the Harbour of Dundee v. Nicol, L.R. (1915), A.C. 550, 31 T.L.R. 118.

Where a corporation is, by its constitution, required to observe certain formalities when making contracts for particular purposes, the requirements of the constitution must be strictly carried out, *e.g.*, in the case of incurring debts the payment of which is not provided for in the estimates for the current year (s. 289), and also in the case of a statutory requirement that "every contract made by an urban authority whereby the value or amount exceeds £50 shall be in writing and sealed with the common seal of such authority": Hunt v. Wimbledon, L.R. (1878) 4 C.P.D. 48, approved in Young v. Leamington, L.R. (1883) 8 A.C. 517.

At common law it was necessary that the contracts of a corporation aggregate should be executed under its common seal, but from the very earliest times certain exceptions to this rule were established, and in trivial matters of daily occurrence and in matters of urgent necessity the seal was not essential. These exceptions have been gradually extended, and it is now settled that a seal is not necessary in the following cases:—

(1) Contracts by a trading corporation for purposes connected with the objects of the incorporation, without reference to the magnitude or insignificance of the subject matter: Halsbury's Laws of England, vol. 8, par. 847; South of Ireland Colliery Company v. Waddle, L.R. (1869) 4 C.P. 617; National Malleable Castings Company v. The Smith's Falls Malleable Castings Company (1907), 14 O.L.R. 22.

(2) In the case of municipal corporations contracts with regard to matters of everyday occurrence or matters of convenience amounting almost to

necessity; Wells v. Kingston-upon-Hull, L.R. (1875) 10 C.P. 402; Kettle v. Winnipeg (1916) 31 D.L.R. 564.

(3) Contracts by corporations (including municipal corporations) where the consideration for them has been executed by the party seeking to enforce them: Clarke v. Cuckfield Union Guardians (1852), 21 L.J.Q.B. 349, 91 R.R. 891; Nicholson v. Guardians Bradfield Union, L.R. (1866) 1 Q.B. 620; Lawford v. Billericay Rural District Council, L.R. (1903) 1 K.B. 772, 19 T.L.R. 322; Douglass v. Rhyl Urban District Council, L.R. (1913) 2 Ch. 407, 29 T.L.R. 605; Pim v. Ontario (1860), 9 U.C.C.P. 304; Lawrence v. Lucknow (1886), 13 O.R. 421; Bernardin v. North Dufferin (1891), 19 S.C.R. 581; Leslie v. Malahide (1907), 15 O.L.R. 4; Dominion Paving and Construction Company v. Toronto (1907), 9 O.W.R. 38; Campbell v. Community General Hospital Almshouse, etc., (1910), 20 O.L.R. 467; East Gwillimbury v. King (1910), 20 O.L.R. 510; Selkirk v. Windsor E. & L.S.R.W. Company (1910), 22 O.L.R. 250; Beck v. York (1914), 5 O.W.N. 836, 7 O.W.N. 493 (varied by Supreme Court of Canada, 24th June, 1915, not reported).

(4) It is not necessary that work done under an executed contract be work "essential" for the purposes of the corporation. It is sufficient if it be "beneficial" work and incidental or ancillary to the purposes for which the corporation exists: Campbell v. Community General Hospital Almshouse, etc. (supra); Wright v. Ottawa and Ottawa Dairy Company (1914), 7 O.W.N. 151, 19 D.L.R. 712.

(5) Contracts relating to land where there have been such acts of part performance as would in the case of an individual entitle to specific performance: Wilson v. West Hartlepool H. & R. Company (1864), 34 Beav. 187, (1865) 2 DeG. J. & S. 475, Vansickler v. McKnight (1914), 31 O.L.R. 531, 19 D.L.R. 505, (1915) 51 S.C.R. 374, 24 D.L.R. 298; King v. Beamish (1916), 36 O.L.R. 325, 30 D.L.R. 116.

(6) How far a corporation, which holds over, is liable upon an implied agreement to hold as tenant from year to year, where such an agreement would be implied in the case of an individual, is not yet settled.

In Garland Manufacturing Company v. Northumberland Paper and Electric Company (1899), 31 O.R. 40, it was held by a Divisional Court that such an agreement was not to be implied. The Court followed Finlay v. The Bristol and Exeter R. Company (1852), 7 Exch. 409, 86 R.R. 704, which it was held was not affected by South of Ireland Colliery Company v. Waddle (supra). The Garland case was approved by the Manitoba Court of Appeal, in Richardson v. Urban Mutual Fire Insurance Company (1916), 28 D.L.R. 12. Cameron, J.A., dissented, and supported his view in an elaborate discussion of the authorities.

Opposed to the view of the Divisional Court in the Garland case and to the view of the Manitoba Court of Appeal that Finlay v. Bristol is not overruled by South of Ireland Colliery Company v. Waddle is the opinion of

Sir Frederick Pollock (Pollock on Contracts, 8th edition, 157), which is supported by the opinion of Garrow, J.A., in National v. Smith's Falls (supra) p. 31, and possibly of Riddell, J., in Young v. Bank of Nova Scotia (1915), 34 O.L.R. 176, 182, 23 D.L.R. 854, 859.

It is submitted that the view of Cameron, J.A., is the better one, and that it will ultimately prevail.

The following cases bear upon the application of the foregoing propositions in particular cases.

ONTARIO CASES.

Thompson v. Yarmouth (1902), 1 O.W.R. 556, in which it was held that a municipal corporation cannot enter into a contract with ratepayers to maintain and repair a bridge.

Rat Portage v. Citizens Electric Company (1902), 1 O.W.R. 44, in which the facts were that a municipal corporation asked for tenders for lighting its streets in accordance with the terms of a draft contract. The defendants tendered, and at a meeting of the council a resolution was passed accepting their tender and authorizing the mayor and clerk to sign the contract as presented in draft. The mayor was absent, but the acting mayor and the clerk signed it at the meeting, and the seal of the corporation was affixed. Later a resolution reciting the agreement and ratifying its execution by the acting mayor was passed, and the minutes of the meeting at which the resolution was passed were read and confirmed at a subsequent meeting, when the seal of the corporation was affixed to them. Thereafter the contract was acted on by both parties.

An action was brought by the corporation seeking to obtain a declaration that the contract was void because of the absence of a by-law authorizing or sanctioning it and that the agreement was not drawn, signed, or sealed in a way to bind the corporation. The action was dismissed, and the defendants obtained a declaration that, as between them and the plaintiffs, the contract was valid and binding, and that it must be carried out in all respects by the plaintiffs.

Rat Portage v. Citizens Electric Company (supra) and Toronto v. Toronto Electric Light Company (1904), 3 O.W.R. 825, (1905) 10 O.L.R. 621, 6 O.W.R. 442, in which it was held that a municipal corporation is bound by acquiescence and may be estopped in like manner as any other corporation.

Toronto Electric Light Company v. Toronto (1915), 33 O.L.R. 267, 21 D.L.R. 859, in which it was held that the doctrine of estoppel does not apply where the question is as to the action of the council in its legislative capacity.

Bourque v. Ottawa (1903), 6 O.L.R. 287, which was the case of a person, who had contracted with a municipal corporation to construct sewers, finding, in the course of his work, that the contents of other sewers of the corporation, the existence of which had not been disclosed to him, but which had to be displaced to enable him to complete his work, flowed into the trenches dug by him and impeded him and caused him additional expense, and it was held that he was entitled to recover from the corporation the loss thus sustained, because the corporation had broken the duty it owed him, to do nothing to prevent or interfere with his doing the work.

Todd v. Meaford (1903), 6 O.L.R. 469, where an agreement was made between a municipal corporation and the owner of land for the purchase by the corporation and possession by a railway company of the portion of the land required by the company, but without a price being fixed, and the railway company deposited a plan, profile and book of reference of the land required in the registry office (which was approved by the railway committee), showing the land, entered upon it and completed the work, it was held that the corporation was not liable for the purchase money, and that the landowner's remedy was against the railway company by arbitration proceedings uuder The Railway Act, and not by action.

Thompson v. Chatham (1905), 9 O.L.R. 343, in which it was held that an agreement entered into by a municipal corporation, under its seal and authorized by by-law of its council, with the plaintiffs for supplying dynamos and station systems for electric street lighting might be varied in any unimportant matter of detail, *e.g.*, by a modification in the mode of payment, without the necessity of passing another by-law.

Brohm v. Somerville (1906), 11 O.L.R. 588, which decided that where under the authority of a by-law passed under The Snow Fences Act (now R.S.O. c. 211), a council has directed the removal of a fence and that it be replaced by a wire or other fence, and the by-law provides that, on the removal of the fence and the erection of such wire or other fence as the council should direct, the persons erecting such fence should be paid "out of the general funds of the municipality" a sum not exceeding thirty-five cents per rod of fence, if the council refuses to pay accordingly and repudiates liability an action to recover the compensation will lie, although the Act provides that, if the parties are unable to agree as to the compensation, the amount shall be settled by arbitration under The Municipal Act, the by-law being a conditional undertaking to pay, and the condition having been fulfilled.

Rogers v. Toronto (1914), 33 O.L.R. 89, 91, 21 D.L.R. 475, in which it was held, approving Kelly v. Winnipeg (1908), 12 Man. L.R. 87, 9 W.L.R. 310, that a council, in making a contract which it may lawfully enter into, may stipulate that fair wages shall be paid to those employed in the manufacture of the article contracted for.

A different conclusion had been reached by the Chancellor, in Crown Tailoring Company v. Toronto, reported in a note to Rogers v. Toronto, pp. 92 to 96, but Middleton, J., declined to follow that case.

In stating his opinion, Middleton, J., said:—

"I know of no principle which enables the Court to prevent a municipality from making any contract with respect to a matter within its jurisdiction which it may see fit to make. . . . The Courts have no right to interfere with municipal action unless the municipality proposes to transcend the limits of the jurisdiction conferred upon it by the legislature."

Leslie v. Malahide (supra), in which it was held that a settlement come to in respect of claims against a municipal corporation which had been accepted by resolution of the council was not binding upon the corporation because of the absence of a contract under seal.

Wright v. Ottawa and Ottawa Dairy Company (supra), in which it was held that a municipal corporation may lawfully supply at the expense of the corporation water where it is necessary to do so for the health and well being of the inhabitants in an emergency caused by the practical breaking down of the corporation's waterworks system.

Wilson v. Ingersoll (1916) 11 O.W.N. 247, in which it was held that where there is a by-law for doing the work, a by-law approving of the contract is unnecessary.

ALBERTA.

Speakman v. Calgary (1908), 1 A.L.R. 454, 9 W.L.R. 264, noted under s. 246.

Weeks v. Vegreville (1915), 9 A.L.R. 56, 25 D.L.R. 795, in which it was held that an Act which authorized the making of contracts for the supply of light or water for "the use of the corporation" empowered the corporation to make contracts for the supply not only for the use of the corporation, as such, but also for the use of the inhabitants of the municipality.

Blomfield v. Starland (1915), 9 A.L.R. 203, 25 D.L.R. 43, 32 W.L.R. 905, 9 W.W.R. 552, in which the cases as to contracts are considered, though the question there was as to opening a road.

Gowans v. Assiniboia Club (1915), 25 D.L.R. 695, 33 W.L.R. 266, the case of an executed contract.

BRITISH COLUMBIA.

North Vancouver v. Tracy (1903), 34 S.C.R. 132, 139, affirming (1903) 10 B.C.R. 235, in which it was held that a resolution of a municipal council accepting an offer made to it for the purchase of land was a mere expression of the willingness of the council to accept the sum named and an authority to the officers of the corporation to make the conveyance, and it was also held that the recital of the resolution in a conveyance, in the statutory form of conveyance by the reeve and clerk of a municipality upon a sale for taxes, prepared and executed by those officers of the corporation but not delivered did not evidence a prior binding contract between the corporation and the person who made the offer.

South Vancouver v. Rae (1906), 12 B.C.R. 64, 3 W.L.R. 346, in which it was held that where a municipal council has resolved to join in an action already launched, the reeve may instruct the commencement of an independent action, as that is a substantial, if not a strict, compliance with the intention of the council.

McIntosh v. Grand Forks (1908), 9 W.L.R. 8, which was the case of an executed contract.

MANITOBA.

Kilpatrick v. Winnipeg (1887), 4 Man. L.R. 103, in which it was held that a municipal corporation is not liable for additional work done on the orders of the chief of police and the police committee on a police station which was being erected by a contractor for the corporation, notwithstanding that the corporation had taken possession and made use by its officials of the additional work.

Curran v. North Norfolk (1892), 8 Man. L.R. 256, in which it was held that a solicitor, who is not employed under the authority of a by-law or resolution of the council, cannot recover for services which have not been adopted by the council and from which it has received no benefit.

Brandon Electric Light Company v. Brandon (1912), 22 Man. L.R. 500, 1 D.L.R. 793, 20 W.L.R. 658, 2 W.W.R. 22, in which it was held that where a settlement of a claim for water rates by a municipal corporation against a consumer was made by unanimous resolution of the council and the terms of the settlement were in part carried out by payment to and acceptance by the treasurer of the corporation of successive instalments of money due to the corporation under the settlement, there was such ratification of the contract as to preclude a successful attack upon it by the consumer on the ground that the settlement was not formally adopted by the council.

NOVA SCOTIA.

Attorney-General v. Halifax (1903), 36 N.S. 177, in which it was held that a municipal council which, having statutory authority to do so, accepted an offer of a person to furnish money for the purpose of erecting a free library on condition that the corporation would provide a specified sum for its maintenance and would also provide a free site for the building, cannot afterwards rescind the contract it has entered into, and that an action by the Attorney-General, on the relation of a ratepayer, lay to restrain the corporation from acting upon a resolution passed by the council purporting to rescind its resolution of acceptance.

Neptune Meter Company v. Halifax (1909), 7 E.L.R. 2. Contract under seal for the purchase of water meters.

Chappel v. Sydney (1909), 44 N.S. 27, 7 E.L.R. 485, which was the case of an executed contract.

Sydney v. Chappel (1910), 43 S.C.R. 478, 7 E.L.R. 486, in which it was held that where a scheme for the establishment of a public library in a municipality, conditional on the corporation procuring the site and providing for its maintenance, fell through, the corporation of the municipality had no authority to enter into a contract involving the expenditure of municipal funds in respect to the building.

Quebec.

Notre Dame de Bonsecours v. Bessette (1898), Q.R. 9 Q.B. 423, in which it was held that where, in a case of urgency, resolutions are passed involving the expenditure of public money without a by-law having been passed, the council merely proceeds irregularly in a matter over which it has jurisdiction, and, having caused the work provided for to be done, the corporation is liable to the persons who performed it, and can properly raise money by a promissory note to pay them and levy on the municipality an amount sufficient to repay the loan.

Thibault v. Montreal (1898), Q.R. 14 S.C. 151, in which it was held that a municipal corporation, for which a building has been erected or repaired and which has the benefit of it, cannot escape from the obligation to pay for it because the work was not ordered or approved by the council and on the ground that a payment is only legal when made with the approbation of the council and on the certificate of the treasurer that he has funds that can be so appropriated.

Amyot v. Quebec (1909), Q.R. 37 S.C. 14, in which it was held that the mayor and councillors of a municipal corporation have authority to employ, at the expense of the corporation, advocates to act in matters in which the latter has an interest, and that a corporation, by approving of such service, ratifies the act of those who engaged it, and that such ratification is equivalent to a prior engagement made by the corporation itself.

Piton v. Stoneham and Tewkesbury (1911), Q.R. 40 S.C. 412, in which it was held that where a municipal council appoints persons "delegates of the municipality at the present session of the legislature" for the purpose of opposing the adoption of a clause in a Bill, their mandate is a personal one, and does not authorize them to employ an advocate, and the corporation is not liable for his fees.

Harris Construction Company v. Montreal (1915), Q.R. 24 K.B. 330, in which it was held that engineers charged with the superintendence of public works are not agents, but salaried employees, and could not bind the city of Montreal by ordering, without authority in writing, changes or increases in the work, this inability resulting from art. 1689 C.C., and from the provisions of s. 337 of the charter of the city.

Connolly v. Quebec (1915), Q.R. 25 K.B. 29, in which it was held that a municipal corporation is bound only by the action of its council; therefore, in the absence of a special mandate to that effect, an officer of the corporation cannot accept for it works, the execution of which it has confided to a contractor, reserving to itself the right to receive the works.

In this case the contract provided that the works should be deemed to be accepted only when the corporation had given a written declaration to the contractor to that effect.

Quinlan v. Montreal (1916), Q.R. 25 K.B. 272, in which it was held that where it is stipulated in a contract with plans and specifications for works to be constructed that "no allowance shall be made to said contractors for any extra or additional work, unless the same be ordered in writing by said city or said architects," the acknowledgement of the architect that he ordered the additional works, the cost of which the contractor claims, takes the place of the prescribed writing.

SASKATCHEWAN.

Manders v. Moose Jaw (1914), 7 S.L.R. 158, 20 D.L.R. 408, 28 W.L.R. 821, in which it was held by Newlands, J., that where the plans furnished by a municipal corporation to a contractor for the erection of a municipal building are faulty and the structure is built in accordance with them, subject to inspection of the work and materials by the corporation's engineer, who is by the contract made a referee, whose decision is binding on both parties, and the structure falls down, the burden not only of establishing that its fall was occasioned by the fault of the contractor, but to provide a certificate from the engineer to that effect, is upon the corporation.

CASES AS TO LIABILITY APART FROM CONTRACT.

It was held in Cruise v. Moncton (1901), 35 N.B. 249, 37 C.L.J. 203, that a Board of Health has no authority to create a liability on the municipal corporation to pay for services rendered by a physician and surgeon in connection with the outbreak of smallpox in the municipality.

The same conclusion was reached by the Supreme Court of British Columbia in Taylor v. Revelstoke (1907), 13 B.C.R. 211, 7 W.L.R. 39.

In Cameron v. Dauphin (1904), 14 Man. L.R. 573, it was held that, under The Public Health Act, R.S.M. 1902, c. 138 (32, 67, 95, 101, 102), persons performing services as nurses or furnishing necessities for a small pox patient are entitled to be paid at once by the municipal corporation without proving that the parents or other persons liable are unable to pay for the services.

In Ross v. London (1910), 20 O.L.R. 578, (1911) 23 O.L.R. 74, it was held that it was a condition precedent to the right of a local Board of Health to employ a physician to attend smallpox patients at the expense of the municipality, under s. 93 of The Public Health Act, R.S.O. 1897, c. 248, that the patients should themselves be unable to pay.

Neither Cruise v. Moncton nor Cameron v. Dauphin was cited or referred to in this case.

S. 93 is now replaced by s. 58 of The Public Health Act, R.S.O. c. 218, which differs from s. 93.

It was held in Johnson v. Halifax (1913), 46 N.S. 474, 9 D.L.R. 220, 12 E.L.R. 251, 49 C.L.J. 157, that a municipal corporation is primarily liable for obligations incurred by a local Board of Health under ss. 25 and 29 of c. 6 of the Statutes of Nova Scotia, 1910, in connection with the suppression of contagious or infectious diseases, with a remedy over against the patient or other person liable for his support if able to repay.

In this case, in which the Court was equally divided, Cameron v. Dauphin was followed and Ross v. London was distinguished on account of the difference in the provisions in question in that case.

Ross v. London was followed in Macdonald v. Inverness (1910), 8 E.L.R. 519.

By R.S.N.S. 1900, c. 50, s. 29, any person who provides for the relief of a pauper, not being liable for his support, is entitled, after notice to the overseers of the poor, to recover any expenses incurred in respect of such relief, and it was held that where a person who had done this for a pauper not having a settlement within the municipality, and had notified the overseers that she could not afford relief to the pauper, and was told by them to turn him out, which she refused to do, and no steps were taken by the corporation to find out the pauper's settlement and remove him, as it was its duty to do, the corporation was liable to pay a reasonable sum for the pauper's support after the notice was given: Bushby v. North Sydney (1913), 46 N.S. 549, 9 D.L.R. 24, 12 E.L.R. 183.

The length of residence required by the Town Act, R.S.S. (1909) c. 85, s. 171, to impose upon the council the duty of providing care and treatment for indigent sick persons is thirty days prior to falling ill, and not thirty days prior to admission to hospital.

The liability of the town arises when the following requisites have been complied with:

1. If a resident falls ill.
2. If such person has been a resident for at least thirty days prior to falling ill.
3. If such person is, for financial reasons or otherwise, incapable of procuring the necessary medical attendance and treatment.

Regina v. Gull Lake (1916) 9 S.L.R. 127, 27 D.L.R. 422.

A person appointed by the Provincial Auditor, under R.S.O. 1897, c. 228, now R.S.O. 1914, c. 200, to audit the accounts of a municipality has no right of action against the corporation of the municipality until three months after the amount has been specifically determined by the Provincial Auditor, with the approval of the Attorney-General or other Minister as provided by s. 16. The approval by the Attorney-General of a tariff according to which the fees and expenses are made up and allowed by the Provincial Auditor is not sufficient: Williamson v. Elizabethtown (1904), 8 O.L.R. 181.

See also cases noted under s. 217 as to liability to pay for the expense of militia called out in case of riot.

The right of the landowner to resume possession in default of payment of the compensation awarded conferred by s. 6 of The Corporation of Victoria Waterworks Act, 1873 (36 Vict. c. 20), as enacted by 55 Vict. c. 64, s. 3, is only an additional safeguard in his interest, and not his only remedy, and he is entitled to maintain an action to recover the sum awarded: Davie v. Victoria (1912), 17 B.C.R. 102, 2 D.L.R. 287, 20 W.L.R. 544, 1 W.W.R. 1021.

Sills v. Lennox (1900), 31 O.R. 512, noted under s. 398, par. 6.

A municipal corporation is not liable for the fees of counsel not retained by it merely because they represented some of its officers and citizens before a Royal Commission of Inquiry: Desaulniers v. Montreal (1913), Q.R. 24 K.B. 135.

Cases as to Formalities Essential to Make a Contract Binding on the Corporation.

Ontario.

In Waterous Engine Works Company v. Palmerston (1890), 20 O.R. 411, (1892) 19 A.R. 47, (1892) 21 S.C.R. 556, it was held that a contract under the corporate seal of the defendant corporation for the purchase of a fire engine, which was not authorized by by-law of the council and not completed by the acceptance of the engine, could not be enforced against the corporation.

The provisions of the Act under consideration in this case, R.S.O. 1887, c. 184, s. 480 (1), differ from the provisions of the present law, s. 398, par. 15. The provision there was that "every municipal council shall have power . . . to purchase or rent for a term of years or otherwise fire apparatus of any kind and fire appliances and appurtenances belonging thereto respectively," and Strong, J., in stating his opinion, pointed out that, inasmuch as the subsection conferred a power on the councils, and by s. 282 (now s. 249 (1)) it was provided that the powers of the council must be exercised by by-law, it necessarily followed that the power to purchase a fire engine must be exercised by by-law.

It will be observed that the provision now is that the councils may pass by-laws for the purposes mentioned in paragraph 15, and it would seem that the reason for holding that such a power must be exercised by by-law is stronger under this provision than it was under the legislation applicable in that case.

A similar conclusion to that reached in the Waterous case was come to in the Gutta Percha Manufacturing Company v. West Toronto Junction, referred to in a note to the Waterous case in 20 O.R. at page 415.

See also Silsby v. Dunnville (1880), 31 U.C.C.P. 301, (1883) 8 A.R. 524, 530.

It is submitted with great deference that the reasoning of Gwynne, J., who dissented from the judgment of the Supreme Court in Waterous v. Palmerston, is unanswerable.

A municipal corporation is endowed by its creation with power to contract (The Interpretation Act, R.S.O. c. 1, s. 27), and at common law, except in certain cases, it must contract under its corporate seal, but save as to this it possesses all the contractual powers which an individual possesses, except such as are by the nature or object of the corporation or from the express or implied terms of its constitution it is prohibited from making (supra). The result of the decision in that case is that the common law powers of a municipal corporation can be exercised only when its contract is entered into under the authority of a by-law of its council, at all events in respect to matters as to which it is by The Municipal Act authorized to pass by-laws. What reason is there for such a restriction—a restriction which in the case of a large city like Toronto would almost paralyze its operations? What is intended by s. 249 (1) is, it is submitted, that such powers as are vested in corporations by The Municipal Act, and which, without the authority which it confers, municipal corporations would not possess—and these powers only—must be exercised under the authority of a by-law of the council.

The decisions in Hunt v. Wimbledon (supra) and Young v. Leamington (supra) are not inconsistent with this view. The legislation in question in those cases dealt expressly with the power to contract and limited it in certain specified cases—a distinction which is pointed out by Richards, J.A., at pages 232,3, of the Man. L.R. in Manning v. Winnipeg (infra).

Barrie Public School Board v. Barrie (1899), 19 P.R. 33, in which it was held that the retainer by a school board of a solicitor to bring or prosecute an action must be under the corporate seal of the board, or, if the retainer is by a committee of the board, the committee must be appointed under the seal of the board.

McDougall v. Water Commissioners of the City of Windsor (1900), 27 A.R. 566, (1901) 31 S.C.R. 326, in which it was held that commissioners for the management of waterworks are merely the statutory agents of the municipal corporation in carrying out the purposes of the Act under which they are constituted, and that a contract for work to be performed in connection with the waterworks not authorized by by-law of the council and which involved an expenditure which would exceed the statutory limit was not a binding contract.

In the Supreme Court it was held that if an action could be brought on such a contract, the municipal corporation would have been a necessary party, and a doubt was expressed as to whether that corporation would not have been the only party liable to be sued.

The same conclusion as to the position of commissioners was reached in Young v. Gravenhurst (1911), 24 O.L.R. 467; Scott v. Hydro-Electric Commission of Hamilton (1914), 7 O.W.N. 385.

Grey v. Markdale (1905), 6 O.W.R. 978, in which it was held that an agreement by a village corporation entered into with a county corporation and authorized by by-law of the council of the village corporation by which that corporation agreed with the county corporation to furnish for ten years electric lighting for the House of Refuge, which the latter corporation had erected in the village, was invalid because the by-law had not been assented to by the electors.

Macartney v. Haldimand (1905), 10 O.L.R. 668, in which the facts were that a council of a municipal corporation, desiring to establish an industrial farm, passed a by-law directing that "a farm be purchased for an industrial farm." Tenders were called for, a committee was appointed to examine the properties offered, and among them that of the plaintiff; the plaintiff's tender was accepted; the title to his property searched by the corporation's solicitor, and a conveyance to the corporation was obtained and registered; a cheque in the plaintiff's favour for the purchase money was made out and signed by the proper officers, but before its delivery to the plaintiff a by-law was passed rescinding the former by-law, ordering the cheque to be cancelled, and directing the property to be reconveyed to the plaintiff, and it was held that the transaction was an executed one, the benefit of which the corporation had obtained, and that, notwithstanding the absence of a by-law specifically authorizing it, it could not be rescinded against the will of the plaintiff.

See also Nicholson v. St. Catharines Collegiate Institute Board (1916) 11 O.W.N. 236, in which, where there was no contract under seal, it was held that there was a sufficient acceptance of the plaintiff's work (preparation of plans for a school house) and adoption by the Board of the action of its committee and of individual members to take the case out of Waterous v. Palmerston (supra) and that it was rather within the lines of Bernardin v. North Dufferin (supra) and like cases, and Campbell v. Community General Hospital (supra).

In the latest reported case, Mackay v. Toronto (1917) 11 O.W.N. 440, Middleton, J. followed Waterous v. Palmerston (supra) and appears to have adopted the view taken in Manning v. Winnipeg (infra Manitoba cases) that a municipal corporation is not liable upon an executed contract in the absence of the corparate seal unless there is a by-law authorizing the contract and that such a corporation, though it may ratify an act done on its behalf without the statutory authority of a by-law, can do so only by by-law. He also expressed the opinion that "the absence of a by-law afforded an answer to the plaintiff's claim and the facts that the contract had been executed, and that the defendants had received benefit from the plaintiff's services, were not sufficient to prevent their setting up this defence."

ALBERTA.

Malcolm v. Blairmore (1912), 10 D.L.R. 835, where the owner of land made a proposition by letter to sell it to the corporation, and, after a favourable report by a committee of the council, the council passed a motion that the land "be secured if possible subject to the passing of the by-law." A by-law for raising the money by debentures was submitted to the electors, and the vote was in favour of it. A notice was then sent to the owner by letter, signed by the secretary-treasurer of the corporation, informing him that the by-law had been approved by the people, and stating that "as soon as we can get the money for the debentures we will be in a position to complete the purchase of your lots as per your offer to the council." The signing and sealing of the by-law was withheld by the mayor on the ground that a member of the council had a personal interest in the sale. Possession had not been taken, it was held that a by-law was unnecessary in order to constitute a valid acceptance of the owner's offer, and specific performance of the contract was adjudged.

BRITISH COLUMBIA.

Burnaby v. British Columbia Electric Railway Company (1913), 12 D.L.R. 320, 3 W.W.R. 628, in which it was held that a municipal corporation could not attack the validity of a contract between it and an electric railway company because the by-law authorizing its execution was not submitted to the electors for its approval, as required by s. 64 of The British Columbia Municipal Act of 1897, where the company had made large expenditures as a direct consequence of its execution, if not pursuant to the contract.

This case was decided before it was held by the Judicial Committee of the Privy Council, in British Columbia Electric Railway Company v. Stewart, L.R. (1913) A.C. 816, 14 D.L.R. 8, 109 L.T. 771, 25 W.L.R. 227, 5 W.W.R. 25 (*infra* notes to s. 249 (1) (necessity for by-law, etc.)), that such a by-law did not require the assent of the electors.

United Trust v. Chilliwack (1896), 5 B.C.R. 128, in which it was held that by reason of The Municipal Act, 1892, s. 82, which provides that "each municipal corporation shall have a corporate seal and the council shall enter into all contracts under the same seal, which shall be affixed to all contracts by virtue of an order of the council," a contract not being under seal, a person claiming under the contractor could not recover, although the contract was wholly executed and the work was accepted by the corporation and part payment had been made, and the clerk of the corporation had acknowledged an order by the contractor in favour of the plaintiff.

The same view as to the imperative nature of the enactment was taken in Paisley v. Chilliwack (1896), 5 B.C.R. 132.

MANITOBA.

Emerson v. Wright (1904), 14 Man. L.R. 636, in which it was held that a by-law is not necessary to authorise the commencement of an action, but the authority may be given by a resolution under the corporate seal.

Ponton v. Winnipeg (1908), 41 S.C.R. 18, in which it was held that a by-law and a contract under seal are essential to bind a municipal corporation to sell land.

Manning v. Winnipeg (1911), 21 Man. L.R. 203, 15 W.L.R. 33, 17 W.L.R. 329, in which the facts were that, a question having arisen as to the cost of certain municipal works, the council by resolution appointed a special committee to consider and investigate the matter; the committee reported recommending that an investigation should take place under an enactment similar to s. 248 (1), and that the committee should be empowered to employ counsel to conduct the investigation, and the report was adopted by resolution of the council. Thereupon the committee retained the plaintiff to act as counsel, and he acted throughout the investigation, and, after it was concluded, sent the account for his services to the corporation, and the council referred it to a special committee. The action was brought to recover the amount of the account, and was tried before Mathers, C.J., who came to the conclusion that the council had power to employ and pay counsel, but that the plaintiff could not recover because he had not been appointed by by-law; that, although the services had been rendered and had been beneficial to the corporation, the corporation was not liable because it had done nothing since the work was completed from which a contract to pay could be implied, that it had "neither accepted nor adopted the plaintiff's work."

In the course of his judgment, the Chief Justice reviewed the English and Canadian cases, and expressed his disapproval of the decision of the Divisional Court in Campbell v. Community General Hospital Almshouse, etc. (supra), which he said he could not reconcile with the decisions of the Court of Appeal in England and of the Supreme Court of Canada in Waterous v. Palmerston (supra). His view was that the case went further than any other decided case, and came close to determining that the bare performance of work, if within the purposes of the corporation of a beneficial character, is sufficient to raise an implied contract to pay, and he added, "with deference I venture the opinion that no previous case has so decided, but there is a long and consistent current of authorities to the contrary."

This decision was affirmed by the Court of Appeal, and there the cases, English and Canadian, were elaborately reviewed.

The Chief Justice was of opinion that the effect of the provisions of the charter of the city of Winnipeg which correspond with ss. 10 and 249 (1) of the Ontario Act is to require that a contract to be binding on the corporation must be entered into under the authority of a by-law of its council, and that, even where a contract, not so authorized, has been executed and what was done under it has been accepted, the corporation is not bound unless the acceptance is evidenced by by-law.

Richards, J.A., pointed out the wide difference in its scope between the enactment under consideration in Hunt v. Wimbledon (supra) and Young v. Leamington (supra) upon which the Chief Justice of the Court of Appeal had relied in support of the conclusion to which he came, and the provisions of the charter, but he declined to say whether "the law would graft exceptions on such an enactment as s. 472 (*i.e.*, the section which corresponds with s. 249 (1) of the Ontario Act) as the Courts in Ontario . . . have done." He was of opinion that that provision did not "dispense with the common law requirement that a corporation shall ordinarily contract under seal," and that "the enactment of a by-law declaring the intent of the municipality to enter into a contract would not dispense with the need of the execution under the seal of the contract so intended if it were a contract that at common law requires a seal," and that the action failed because there was no contract under seal. He was also of opinion that the Campbell case (supra), although perhaps supported by previous Ontario decisions, was not supported by Lawford v. Billericay, and that in the case of a contract not under seal the law was that "where the work in respect of which the plaintiff seeks to recover is work done in respect of matters for the doing of which the corporation was created, and the benefit of the work is accepted by the corporation," the corporation must pay for it.

Perdue, J.A., said that it was unnecessary to decide whether the enactment under consideration was "to be confined to the specific legislative and administrative powers conferred by the various sections of the charter" or was "to be extended to every detail of business connected with the affairs of the city"; he doubted whether the services performed by the plaintiff would be "designated as a work necessary for the city in carrying out the purposes for which it was incorporated," and his conclusion was that, as the corporation had not accepted or adopted the plaintiff's work, as there was no by-law and contract under seal, and as there was nothing to warrant the implication of a contract to pay, the action failed.

Cameron, J.A., was of opinion that, "there being no contract under seal and no by-law of the council under seal and signed as prescribed by the charter," the plaintiff could not recover.

He also agreed with the Chief Justice that, in order to render the corporation liable as upon an executed contract, its acceptance of the work must have been by by-law.

QUEBEC.

Real Estate Investment Company v. Richmond (1902), Q.R. 23 S.C. 151, in which it was held that where a contract with a municipal corporation requires the sanction of a by-law approved by the ratepayers, and a by-law substantially embodying the terms of the contract was defeated by the votes of the ratepayers, the corporation is not liable on the contract.

Citizens Light and Power Company v. St. Louis (1902), Q.R. 21 S.C. 241, in which it was held that the council of a town has power by resolution and without the enactment of a by-law to contract for matters pertaining to the ordinary municipal administration of the town, the cost of which is payable out of ordinary revenue, that a contract for the electric lighting of the streets of a town is a matter pertaining to ordinary municipal administration, and that where such a contract has been executed with reasonable efficiency for several years, with full acquiescence of the party seeking to set it aside, it cannot subsequently be rescinded by resolution of the council.

This judgment was reversed by the Court of King's Bench (1903), Q.R. 13 K.B. 19, which held that a by-law was necessary, but the judgment of the King's Bench was reversed and the judgment of the trial Judge was restored by the Supreme Court of Canada, but on a different ground, viz., that the defendant had in the action confessed judgment for a part of the plaintiff's claim, and was, therefore, debarred from further impeaching the validity of the contract: (1904) 34 S.C.R. 495.

La Compagnie des Poutres Siegwart v. Deschambault (1912), 5 D.L.R. 395, in which it was held that where a municipal corporation has, under the authority of a by-law duly passed, entered into a contract with regard to a matter as to which it has power and jurisdiction to contract, and the contract becomes illegal owing to the failure of the council to promulgate the by-law in accordance with the requirement of art. 335 of the Municipal Code, the person with whom the contract is entered into is entitled to recover damages for the loss of the profit he would have made if the contract had been performed, and is also entitled to recover the expense of the plans and specifications which he had prepared and were required to accompany his tender for the work.

This would appear to be in accordance with art. 706 of the Municipal Code, which provides that "the corporation the council whereof passed the by-law so annulled is alone responsible for the damages and rights of action proceeding from the putting in force of such by-law or part of a by-law."

In this case the distinction is pointed out between a contract which is *ultra vires* the corporation and one which is *intra vires*, but becomes illegal owing to a failure to comply with the "inherent formalities" to the by-law under the authority of which it was entered into.

It is also there laid down that, as respects persons entering into an *intra vires* contract with public bodies and officers, the by-law under the authority of which it was entered into is "to be presumed to have been adopted with all the inherent formalities both preliminary and subsequent to such a by-law," and, among other authorities in support of that conclusion, Dillon on Municipal Corporations, 5th ed., s. 1611 (the reference in the case is to an earlier edition, in which the section is numbered 936), is referred to.

Liability of Municipal Corporations for Torts (Wrongs).

A corporation aggregate is liable to be sued for any tort provided that: (1) It is a tort in respect of which an action would lie against a private individual; (2) the person by whom the tort is actually committed is acting within the scope of his authority and in the course of his employment on the corporation's behalf; and (3) the act complained of is not one which the corporation would not in any circumstances be authorized by its constitution to commit: Halsbury's Laws of England, vol. 8, par. 854.

Most of the reported cases in Canada as to liability for torts are cases of trespass to person or property, negligence and nuisance, and only these and some special cases will be referred to.

The cases of torts arising out of failure to keep in repair the highways and bridges are dealt with in the notes to s. 460. Many of the flooding cases would come properly under the head of negligence as well as of nuisance, and the cases as to negligence and nuisance are, therefore, grouped together.

Before referring to the cases under the general heading of liability for torts, it will be convenient to state the result of the authorities as to actions for injuries to land, which would appear to be that:—

1. Where the injury is caused in the performance of a statutory duty, in the absence of negligence, no action lies, but the injured person must seek compensation under the Act, and this applies whether or not what has been done was done under the authority of a by-law.

See notes to s. 249.

2. Subject to what is said in No. 5, where the injury is caused by the negligent character of the work or by negligence in the doing of it, and whether or not is is done under the authority of a by-law, an action lies for the recovery of the damages sustained owing to the negligent manner in which the work was done.

A leading case as to this is Geddis v. Proprietors of the Bann Reservoir L.R. (1878), 3 A.C. 430.

Raleigh v. Williams L.R. (1893), A.C. 540, is not inconsistent with this statement. It was the case of a drain constructed under the authority of a by-law, passed under the Drainage Act, bringing to another drain a large body of water which would not otherwise have come there, with the result that in the time of high water and at other times the plaintiff's lands were flooded. It had been held that an action for the recovery of the resulting damage would lie, but the decision of the Supreme Court of Canada so holding was reversed by the Judicial Committee of the Privy Council. In stating the opinion of the Board, Lord Macnaghten said:—

"It was argued on behalf of the respondents that if a drainage work constructed under a by-law duly passed turns out in the result not to answer its purpose by reason of the insufficiency of the outlet or by reason of some other defect which a competent engineer ought to have foreseen and guarded against, or if the result of a drainage work is to damage a person's land by throwing water upon it which would not otherwise have come there—that is actionable negligence on the part of the municipality. This argument, in their Lordships' opinion, is wholly untenable": p. 550.

The headnote of the case is misleading. It was not found that, in doing what it had done, the corporation was guilty of negligence; indeed, the view of the Board was that it had not been guilty of actionable negligence, for the reason that, acting in good faith, it accepted the plan of the engineer and carried it out. An engineer's report was, under the Act, an essential preliminary to the passing and the foundation of the by-law, and the council could not modify his plan, though it might be returned for amendment. The case was, therefore, one in which what was done was lawfully done and done without negligence on the part of the corporation, under the authority of a statute which provided for compensation to landowners whose lands were injuriously affected by the work, and what was decided was that the plaintiff was, therefore, not entitled to maintain his action, but must seek compensation.

See also Martin v. Middlesex (1913), 4 O.W.N. 1540, in which the same view is expressed as to the effect of that case.

3. Whether what has been done was done in the performance of a statutory duty or under the authority of a by-law, if unnecessary injury is caused, the unnecessary injury is wrongful and an action lies to recover the damages sustained by reason of it.

This is perhaps only another way of stating what is said in No. 2.

4. Where a by-law is necessary and the work is not done under the authority of a by-law, the act is wrongful, and an action lies.

5. Where the basis for the passing of a by-law and a thing essential to the authority to pass it is the report of an engineer, *e.g.*, in the case of a drainage by-law, an action does not lie against the corporation for injuries necessarily resulting from the execution of the work in accordance with the plan of the engineer, if the council in good faith acted upon his report, but the injured person, although the injury done to him was occasioned by an improper plan of drainage adopted by the engineer and reported by him to the council, must seek compensation under the provisions of the Act under the authority of which the work was done: Raleigh v. Williams (supra).

When liable for nuisances and when not.

"Where the Legislature has authorized the exercise of the powers under consideration" (*i.e.*, to do specific works) "and has expressly or impliedly directed the manner and place in which and the purpose for which the powers are to be exercised or where, without such directions, the inevitable or natural result of the proper exercise by the undertakers of such powers is the creation or causing of a nuisance, no liability arises in respect of it": Halsbury's Laws of England, vol. 21, par. 878; but "where persons, whether for the purpose of profit or for the benefit of the public, are authorized by statute to effect a particular object and are granted powers in that behalf, they are bound to exercise their powers, whether in the original construction or in the subsequent maintenance of the authorized works, with due regard to the common law rights of others, but not necessarily to provide for every possible contingency": Ib. par. 879.

The distinction between the two classes of cases is perhaps best illustrated by a concrete case. A statutory authority to a tramway company to pave a street with wood paving does not absolve the company from liability for using a kind of wood paving that causes injury to the property of others, but it would have been under no liability for the injury if the authority had been to use the kind of wood paving that was used: West v. Bristol Tramways Company, L.R. (1908), 2 K.B. 14, 17-8 (note), 23, 24 T.L.R. 299.

See also Chadwick v. Toronto (1914), 32 O.L.R. 111, 116. Laurentide Paper Company v. Rex (1915) 15 Ex. C.R. 499.

Sewers.

Ontario Cases.

A municipal corporation is under no obligation to build sewers for the drainage of houses and lots, but if it properly constructs a sewer in a street according to the general plan of drainage adopted by the corporation, it is not liable to the owner of a house subsequently erected in the street because the sewer is not sufficiently deep to allow a proper fall to the house: Johnston v. Toronto (1894), 25 O.R. 312.

Where a system of drainage is adopted by a corporation and property owners are allowed to use the sewers for the drainage of their premises on payment of the cost of constructing the necessary connection, the cost of the general drainage being defrayed out of the general revenue except where the local improvement system is adopted, the corporation is responsible only for actual negligence, and is not an insurer against any possible accident, stoppage or overflow from the works: Noble v. Toronto (1881), 46 U.C.R. 519, 529; but where a corporation has required the property owners to use a sewer by connecting their private drains with it, and the sewer is negligently or improperly constructed, or it becomes obstructed and the corporation does not remove the obstruction within a reasonable time after knowledge or notice of the obstruction and injury results to a property owner from the overflow of the sewer, the corporation is liable for it. A corporation is also liable if it brings to land by means of a drain or sewer more water than would otherwise come to it, and pours it wilfully upon the land, or, after bringing the water to the land, negligently allows it to escape and flow over the land: Welsh v. St. Catharines (1886), 13 O.R. 369, 379, 380.

A corporation is not liable for injuries sustained in consequence of the insufficiency of a sewer to carry off the water or sewage which comes into it if it was constructed and is maintained of a capacity which, according to the requirements of good engineering and the standard adopted by the cities of Canada and the United States, is sufficient for the purposes which the sewer is intended to serve: Faulkner v. Ottawa (1909), 41 S.C.R. 190, and Garfield v. Toronto (1895), 22 A.R. 128.

Other Province Cases.

British Columbia.

Woodward v. Vancouver (1909-1911), 16 B.C.R. 457, 19 W.L.R. 297, 1 W.W.R. 70, in which it was held, reversing (1909) 14 B.C.R. 403, 12 W.L.R.

156, that the defendant corporation was not liable for injury done to the plaintiffs' premises by water from its sewer, which came upon the plaintiffs' premises through their own drain, which for their own convenience, though with the permission of the corporation, they had connected with its sewer.

New Brunswick.

Lirette v. Moncton (1904), 36 N.B. 475, in which it was held that a municipal corporation, which, under statutory authority, constructs a sewer after plans made by a competent engineer and adopted by the council, is not guilty of actionable negligence on account of the insufficiency of the sewer to answer its purpose, and a person thereby injured has no remedy by action at law. It makes no difference in this respect whether the use of the sewer is voluntary or under compulsion.

Curless v. Grand Falls (1905), 37 N.B. 227, in which it was held that hen a sewer is properly constructed, but gets out of repair, to the knowledge of the corporation, and, in consequence of the want of repair, injury is caused by the escape of the sewage, the corporation is liable; it is not a case of non-feasance.

McKay v. St. John (1908) 38 N.B. 393, 4 E.L.R. 529, in which it was held that the defendant corporation was liable for flooding a cellar with sewage from a corporation sewer, which, though properly constructed, got out of repair to the knowledge of the corporation.

Nova Scotia.

Judge v. Liverpool (1916), 49 N.S. 513, 28 D.L.R. 617, in which it was held that a municipal corporation is not liable for the consequences of an overflow from its sewer into a cellar where the overflow is due to an unusual rainfall. The fact that there was some obstruction in the sewer by a stand pipe, it appearing that if it had not been there the water would not have been carried off by the sewer, did not render the corporation liable.

Quebec.

Papineau v. Longueuil (1896), Q.R. 11 S.C. 98, in which the defendant corporation was held liable for injury caused by the flooding of a cellar and the sub-soil owing to the outlet for a sewer being insufficient.

A. M. C. Medicine Company v. Montreal (1899), Q.R. 15 S.C. 594, in which it was held that a municipal corporation is not responsible, after having, in good faith, constructed a system of sewerage in accordance with the plans of skilled engineers, if the drains fail to keep underground cellars free from water when the flooding does not depend on improper construction or negligent maintenance of the sewers, and particularly where the premises of the person complaining were erected after the construction of the sewerage system.

Darragh v. Coté (1915), Q.R. 48 S.C. 478, in which it was held that the defendant corporation was not liable for injuries caused by the overflow of a sewer because of the neglect of the plaintiff to close the opening of the sewer into his cellar.

SASKATCHEWAN.

Brown v. Regina (1914), 7 S.L.R. 197, 20 D.L.R. 470, 29 W.L.R. 537, 7 W.W.R. 228, in which the defendant corporation was held liable for injuries caused by its having overloaded its sewers.

CASES AS TO NEGLIGENCE AND NUISANCE.

ONTARIO CASES.

This list is not exhaustive, because most of the earlier cases are referred to in those mentioned in the list, and it does not include the cases already mentioned. The cases in which the plaintiff failed are marked with a star.

Rowe v. Rochester (1870), 29 U.C.R. 590 (flooding land).

McGarvey v. Strathroy (1885), 10 A.R. 631 (causing water to flow and rest upon land).

*Gray v. Dundas (1886), 11 O.R. 317, (1887) 13 A.R. 588, in which it was held that a municipal corporation is not liable for the fouling of a stream by a municipal drain, otherwise harmless, into which a factory company permitted noxious water from its works to escape.

Van Egmond v. Seaforth (1883), 6 O.R. 599, in which the contrary was apparently held, was distinguished.

Derinzy v. Ottawa (1887), 15 A.R. 712 (flooding land) and cases cited there.

Connell v. Prescott, (1892) 20 A.R. 49, (1893) 22 S.C.R. 147 (injuries caused by negligence in blasting operations).

Mackenzie v. West Flamborough (1899), 26 A.R. 198, in which it was held that where a drain is out of repair and lands are injured by water overflowing from it, the municipal corporation bound to keep it in repair cannot escape liability on the ground that the injury was caused by an extraordinary rainfall unless it is shown that, even if the drain had been in repair, the same injury would have resulted.

Lawrence v. Owen Sound (1902), 1 O.W.R. 559, (1903) 5 O.L.R. 369 (flooding land).

*Slinn v. Ottawa (1902), 1 O.W.R. 269 (flooding land).

*Brown v. Hamilton (1902), 4 O.L.R. 249 (injury by fireworks).

*Turner v. York (1902), 1 O.W.R. 723 (flooding land).

Swayzie v. Montague (1902), 1 O.W.R. 742 (flooding land).

*Rogers v. Petrolia (1903), 2 O.W.R. 709 (making ditch in highway).

Mathews v. Hamilton (1903), 6 O.L.R. 198 (discharging sewage into navigable waters).

Weber v. Berlin (1904), 8 O.L.R. 302 (causing sewage to flow on plaintiff's land).

*Jephson v. Niagara Falls (1904), 3 O.W.R. 938 (flooding land).

*Clipsham v. Orillia (1904), 4 O.W.R. 121, (1905) 5 O.W.R. 298, 786, 9 O.L.R. 713 (flooding land).

*Hill v. Taylor (1904-5), 9 O.L.R. 643 (collapse of municipal building in course of erection).

Donovan v. Lochiel (1905), 5 O.W.R. 222, 785 (fouling water course).

Passmore v. Hamilton (1905), 6 O.W.R. 847, (1906) 8 O.W.R. 82 (flooding land).

Taylor v. Collingwood (1905), 10 O.L.R. 182 (discharging water from a highway on to the plaintiff's land).

Gloster v. Toronto Electric Light Company (1906), 12 O.L.R. 413, (1906) 38 S.C.R. 27 (electric wire in proximity to the highway).

The plaintiff failed against the municipal corporation, but recovered against the electric light company.

*Hammill v. Grand Trunk R. Co. and Hamilton (1906), 8 O.W.R. 434 (building too close to railway tracks).

*Burke v. Tilbury North (1906), 13 O.L.R. 225 (placing earth on plaintiff's land).

Campbell v. Cluff and Ottawa (1907), 9 O.W.R. 401 (fall of building left standing after fire).

James v. Bridgeburg (1907), 9 O.W.R. 189 (flooding land).

*Gallagher v. Toronto (1907), 9 O.W.R. 310, 696 (insufficiency of sewer).

Smith v. Eldon (1907), 9 O.W.R. 963 (flooding land).

*Faulkner v. Ottawa (1906), 8 O.W.R. 126, (1907) 10 O.W.R. 807, (1908) 41 S.C.R. 190 (water backing up from sewer).

*Donaldson v. Dereham (1907), 10 O.W.R. 220 (flooding land).

*Butler v. Toronto (1907), 10 O.W.R. 876 (negligence in maintaining isolation hospital).

*Nettleton v. Prescott (1907-8), 16 O.L.R. 538, (1910) 21 O.L.R. 561 (improper heating of lock-up).

Roberts v. Port Arthur (1907), 10 O.W.R. 1111, (1908) 11 O.W.R. 642 (insufficiency of sewer).

*Lamport v. Toronto (1908), 11 O.W.R. 537 (backing up of water owing to insufficiency of culvert).

*Dorst v. Toronto (1908), 11 O.W.R. 738, 12 O.W.R. 261 (flooding by backing up of water).

Rudd v. Arnprior (1908), 11 O.W.R. 886, 13 O.W.R. 172 (flooding land by bringing water upon it).

Methodist Church v. Welland (1908), 11 O.W.R. 429, 12 O.W.R. 153, 949 (backing steam roller on gas pipe causing fire).

Sutton v. Dundas (1908), 11 O.W.R. 501, 13 O.W.R. 126 (defective fastening fire alarm wire resulting in contact with live electric wire).

Mandley v. Monck (1909), 1 O.W.N. 271, 14 O.W.R. 65, 1222 (flooding land).

Vanderberg v. Markham (1910), 1 O.W.N. 441 (flooding land).

McMulkin v. Oxford (1910), 1 O.W.N. 410, 747 (flooding land by ditches and culverts).

Hurd v. Hamilton (1910), 1 O.W.N. 881 (child injured by retaining wall without railing).

Young v. Gravenhurst (1910), 22 O.L.R. 291, (1911) 24 O.L.R. 467 (injury by electric current).

Carney v. Colborne (1910), 2 O.W.N. 432 (flooding land).

Boyd v. Toronto (1911), 23 O.L.R. 421, 18 O.W.R. 897 (removal of lateral support from land).

Crowther v. Cobourg (1912), 1 D.L.R. 40, 3 O.W.N. 490, 20 O.W.R. 844 (polluting stream with sewage).

*Baldwin v. Widdifield (1912), 3 D.L.R. 880, 3 O.W.N. 1348, 22 O.W.R. 267 (flooding land).

McGuire v. Brighton (1912), 7 D.L.R. 314, 4 O.W.N. 137, 23 O.W.R. 223 (flooding land).

Moore v. Cornwall (1912), 7 D.L.R. 413, 4 O.W.N. 145, 23 O.W.R. 113 (flooding land).

Wigle v. Gosfield South (1912), 25 O.L.R. 646, 2 D.L.R. 619, 21 O.W.R. 483 (flooding land).

*Gatto v. Toronto (1912), 4 O.W.N. 356, 23 O.W.R. 350 (escape of water from waterworks pipe).

*Wood v. Hamilton (1912-3), 28 O.L.R. 214, 8 D.L.R. 825, 12 D.L.R. 451, 23 O.W.R. 627 (non-repair of market stall let to the plaintiff).

Martin v. Middlesex (1913), 12 D.L.R. 246, 4 O.W.N. 682, 1540 (flooding of land owing to defective highway work).

*Ollman v. Hamilton (1913), 11 D.L.R. 1, 4 O.W.N. 1122, 24 O.W.R. 454 (flooding land).

*Gagnon v. Haileybury (1913), 5 O.W.N. 435 (damage caused by fire).

Guelph Worsted Spinning Co. v. Guelph (1914), 30 O.L.R. 466, 18 D.L.R. 73 (flooding land).

Ruddy v. Milton, (1913) 5 O.W.N. 525, (1914) 6 O.W.N. 253, 16 D.L.R. 879 (flooding land by obstructing a natural watercourse).

Scrimger v. Galt (1914), 16 D.L.R. 867, 6 O.W.N. 75 (pollution of waters of creek).

Till v. Oakville (1914), 31 O.L.R. 405, 20 D.L.R. 635, (1915) 33 O.L.R. 120, 21 D.L.R. 113 (injury by electric current).

*Robinson v. Havelock (1914), 32 O.L.R. 25, 20 D.L.R. 537 (unfenced gravel pit abutting on highway).

Chadwick v. Toronto (1914), 32 O.L.R. 111 (noise and vibration occasioned in the operation of waterworks pumps by electrical power).

*Oskey v. Kingston (1914), 32 O.L.R. 190, 20 D.L.R. 959 (defective system for supplying electric current for lighting a building).

*Collier v. Hamilton (1914), 32 O.L.R. 214, 20 D.L.R. 629 (workman killed by an explosion of gas while working in a man hole, no evidence of negligence).

Lavere v. Smith's Falls (1915), 34 O.L.R. 216, 24 D.L.R. 866, (1915) 35 O.L.R. 98, 26 D.L.R. 346 (injury to patient in hospital).

In re Hogan and Tudor (1915), 34 O.L.R. 571. (A municipal corporation may pay, but is not bound to pay, compensation, under s. 18 of The Dog Tax and Sheep Protection Act, R.S.O. 1914, c. 246, to a person whose sheep have been killed or injured by a dog.)

Reynolds v. Windsor (1915), 8 O.W.N. 234, 9 O.W.N. 6 (dumping refuse and filth near to and on the plaintiff's vacant land).

*Lester v. Ottawa (1915), 8 O.W.N. 295, 591 (injury caused by explosion of a dangerous substance removed from a burning building and placed in proximity to a highway by a fireman).

McPhee v. Toronto (1915), 9 O.W.N. 150 (injury caused by breaking of a bench in a public park).

Lambert v. Toronto (1916), 9 O.W.N. 452, 36 O.L.R. 269, 29 D.L.R. 36, 54 S.C.R. 200 (not properly insulating guy wires).

Ormsby v. Mulmur (1916), 36 O.L.R. 566, 31 D.L.R. 76 (sand deposited on land).

McConnell v. Toronto (Township) (1916), 10 O.W.N. 234, 11 O.W.N. 62 (flooding land).

Kuusisto v. Port Arthur (1916), 37 O.L.R. 146, 31 D.L.R. 670 (negligent operation of street railway).

See also Mayor, etc., Hamilton v. Kannuluik (1906), A.C. 105, 22 T.L.R. 38 (flooding land).

OTHER PROVINCE CASES.

ALBERTA.

Cardston Drug and Book Company v. Cardston (1906), 3 W.L.R. 64, in which it was held that the defendant corporation was not liable for the flooding of the plaintiff's land.

Purmal v. Medicine Hat (1908), 1 A.L.R. 209, 7 W.L.R. 437, in which it was held that a municipal corporation, invested with statutory power to develop or manufacture a dangerous substance, *e.g.*, inflammable gas, is not liable in the same way as an individual without proof of negligence for damages occasioned by the escape or explosion of such substance.

Renwick v. Vermillion (1910), 15 W.L.R. 244, in which the defendant corporation was held liable for injury caused by works collecting water from surrounding lands and turning them back on the land of the plaintiff.

Harnovis v. Calgary (1912), 7 D.L.R. 789, 2 W.W.R. 312, (1913) 6 A.L.R. 1, 11 D.L.R. 3, 23 W.L.R. 847, 4 W.W.R. 263, in which it was held that, notwithstanding the contributory negligence of the person injured, if the facts establish primary negligence on the part of the person by whom the injury was caused and the injury occurred through the latter's ultimate negligence, he is responsible in damages for the injury.

In this case the jury found that the defendant was guilty of negligence, that the plaintiff was guilty of negligence in not looking more sharply for the car, and that the defendant, notwithstanding the plaintiff's negligence, could have averted the accident by the exercise of reasonable care.

Davidson v. Lethbridge (1912), 4 D.L.R. 523, 21 W.L.R. 273, 2 W.W.R. 317, in which it was held, citing Renwick v. Vermillion (supra) and Ashley v. Port Huron (1877), 35 Mich. 296, that a municipal corporation is liable for injuries sustained by water percolating into a cellar owing to the negligent manner in which a trench for a sewer dug in an abutting highway had been filled in, and the fact that the person who suffered the injury had himself filled in in the same manner part of a connecting trench does not affect his right to recover.

In re Forster and Medicine Hat (1913), 5 A.L.R. 36, 9 D.L.R. 555, 23 W.L.R. 200, 3 W.W.R. 618, in which it was held that the lowering of the grade of a highway and thereby depriving an abutting landowner of access to his property is a tortious act for which an action lies.

Clare v. Edmonton (1914), 15 D.L.R. 514, 26 W.L.R. 678, 5 W.W.R. 1133, in which it was held that a riparian owner who suffers damage owing to a municipal corporation discharging sewage into a river is entitled to maintain an action against the corporation, and is not bound to seek compensation by arbitration.

Randall v. Calgary (1916), 33 W.L.R. 886, 9 W.W.R. 1508, in which it was held that the erection of a ramp in front of property by a railway company, which was bound by an agreement with the municipal corporation to erect it, gives a right of action against the corporation for the damages occasioned to the property.

Collings v. Calgary (1916), 29 D.L.R. 697, 34 W.L.R. 6, 1032, 10 W.W.R. 1, 974, in which it was held that a municipal corporation is not liable in damages for a collector's delay in presenting a cheque given in payment of taxes.

Jamieson v. Edmonton (1916), 9 A.L.R. 253, 27 D.L.R. 168, 33 W.L.R. 851, 9 W.W.R. 1287, in which it was held that a municipal corporation was not liable for injuries sustained owing to a sidewalk being out of repair, where the want of repair was caused by the sidewalk being driven over in contravention of a by-law of the council, and that a municipal corporation is not liable for failure to enforce a municipal by-law.

British Columbia.

Earle v. Victoria (1892), 2 B.C.R. 156, in which it was held that a municipal corporation is answerable for the damages sustained owing to a fire alarm wire belonging to it breaking and falling upon an electric wire belonging to a private corporation, causing injury to person or property.

New Westminster v. Brighouse (1892), 20 S.C.R. 520, in which it was held that where a council, in improving a street, lowers its grade and in so doing causes a subsidence of adjoining land, and no steps have been taken for expropriating the right to do so, an action lies against the corporation for the damage sustained by the landowner, notwithstanding that a by-law has been passed for raising money for improving the street where no by-law was passed expressly ordering the improvements that were made.

In the same case it was held that, where a corporation, in lowering the grade of a highway, takes no precautions to prevent the subsidence of the adjoining land, the corporation is guilty of negligence, however lawful the lowering of the grade may have been if skilfully executed.

Steves v. South Vancouver (1897), 6 B.C.R. 17, in which the facts were that a municipal corporation, which had statutory authority to take from land, without payment, gravel for its roads, let a contract for grading and gravelling a road within the limits of its municipality, the contract containing no provision as to where the gravel was to be obtained; the contractor entered adjacent private property and took from a pit there in such a manner as to undermine a large tree standing close to the highway, in consequence of which the tree fell and killed a person who was driving on the road; and, to be assured of its quality, the taking of the gravel was superintended by the municipal road inspector. The jury found that the excavation was made by the order or permission of the corporation, and that, irrespective of who caused the excavation, the subsequent condition of the tree was a dangerous nuisance to the highway, of which the corporation had notice, and it was held that the corporation was responsible for the act of the contractor in undermining the tree to the same extent as if he was a labourer acting under the orders of the road inspector or the board of works, that one who employs a contractor to do a work not necessarily a nuisance, but which has become so by reason of the manner in which the contractor has performed it, and the employer accepts the work in that condition, he becomes at once responsible for the nuisance.

He who knowingly maintains a nuisance is as liable for its consequences as he who created it.

Milton v. Surrey (1903), 10 B.C.R. 296, in which the defendant corporation was held liable for flooding land by building a road culvert.

Phillifant v. Keller and South Vancouver (1910), 13 W.L.R. 293, in which it was held that a municipal corporation is liable in damages for the act of its contractor in negligently and improperly lighting a fire on its land for the purpose of clearing a road, which the corporation was opening up, from brush, logs, etc.

British Canadian Securities v. Victoria (1911), 16 B.C.R. 441, 19 W.L.R. 242, noted under s. 406, par. 8.

O'Connor v. Victoria (1913), 11 D.L.R. 577, 4 W.W.R. 4, in which it was held that where a municipal corporation, in the course of constructing a roadway, removes human remains from the land wherein they are buried, without first procuring legal authority to interfere with the bodies, it is liable in trespass to the owner of the land, but is not liable in any way to any one who has not title to the land, and where there is nothing in the circumstances to justify interference with the bodies, in the way in which they are interfered with, punitive damages should be awarded.

It is difficult from the report of this case to ascertain the exact ground on which the decision was based or the exact circumstances of the case.

If the bodies were buried in the soil of the highway, and, as in Ontario, the soil and freehold of the highway was vested in the corporation, or, as is now the law in British Columbia, R.S.B.C. 1911, c. 99, s. 5, the soil and freehold of every public highway is vested in the Crown, and as was held, the bodies had become part of the freehold, it is difficult to see what title the plaintiffs had to sue.

Loach v. British Columbia Electric Railway Company (1914), 19 B.C.R. 177, 16 D.L.R. 245, 6 W.W.R. 322, L.R. (1916) A.C. 719, 23 D.L.R. 4, 85 L.J.P.C. 23, 113 L.T. 946, 8 W.W.R. 1263, in which it was held that the rule laid down in Harnovis v. Calgary (supra) applies although the defendant did not commit any negligent act subsequently to the plaintiff's negligence, but had incapacitated himself by his previous negligence from exercising such care as would have avoided the result of the plaintiff's negligence.

Halpin v. Victoria (1915), 21 B.C.R. 14, 23 D.L.R. 333, 7 W.W.R. 1058, in which it was held that a municipal corporation is not liable for injuries caused by a spluttering piece of fireworks at a display held in a municipal park under the direction of a citizens' celebration committee, although the corporation had, under statutory authority, contributed towards the expense of the display.

Hemphill v. McKinney (1915), 21 B.C.R. 561, 27 D.L.R. 345, 33 W.L.R. 688, in which the defendants, who were commissioners under the Drainage, Dyking and Irrigation Act, R.S.B.C. 1911, c. 69, were held liable for the overflow of land due to their failure to provide a proper outlet for a drainage system formulated and carried out by them, and it was held that the fact that another authority had turned additional water into the same drain and increased the flow of water did not excuse them.

Manitoba.

Atcheson v. Portage La Prairie (1893), 9 Man. L.R. 192, (1894) 10 Man. L.R. 39, in which it was held that where a ditch was dug on a highway by the orders of a ward committee of the council of the defendant corporation, but no resolution, by-law or motion was passed by the council providing for the construction of it and no formal authority to execute the work had been given, the corporation was not liable to an action by a landowner for damage done to his land owing to the negligent construction of the ditch, notwithstanding that a resolution had been passed by the council authorising the treasurer to pay out money for ward appropriations on the orders of the chairman of the ward committees and two payments had been made on account of the work, these acts not affording sufficient evidence of the adoption of the work by the council so as to make the corporation liable.

Foster v. Lansdowne (1897), 12 Man. L.R. 42, in which it was held on demurrer to the statement of claim that where, owing to the negligent and improper construction by a municipal corporation of a ditch for drainage purposes, which under The Municipal Act the corporation has no power to construct except under the authority of a by-law, lands are overflowed, an action lies by the landowner for the recovery of the damages he has sustained.

It was unnecessary as the Court held to decide whether a landowner must resort to arbitration under s. 665 of The Municipal Act for compensation for such an injury where negligence is charged.

This case was followed in Teitelbaum v. Morris (1907), 5 W.L.R. 449.

Foster v. Lansdowne (1899), 12 Man. L.R. 416, in which it was held, following Atcheson v. Portage La Prairie (1893), 9 Man. L.R. 192, that where a ditch which is constructed by a municipal corporation diverts water from its natural course and collects it in the ditch, with the result that land is overflowed, the corporation is answerable for the injury although a by-law had been passed authorizing the expenditure of money upon the ditch, and it was constructed wholly upon land under the control of the corporation. It makes no difference that the corporation exercised proper care in the selection of its servants and agents if they acted within the scope of their employment.

This case was followed in Teitelbaum v. Morris (1907), 5 W.L.R. 449.

Baskerville v. Franklin (1906), 3 W.L.R. 547, in which the defendant corporation was held liable for the flooding of land caused by failure to keep drains in repair.

Chatwin v. Rosedale (1907), 6 W.L.R. 474, in which the defendant corporation was held liable for flooding land by diverting a watercourse.

Rose v. Ochre River (1910), 15 W.L.R. 200, in which the defendant corporation was held liable for flooding land.

Lamontagne v. Woodlands (1912), 22 Man. L.R. 495, 5 D.L.R. 524, 21 W.L.R. 881, in which the defendant corporation was held liable for flooding and injuring the land of the plaintiff.

Mondor v. Tache (1913), 23 Man. L.R. 457, 11 D.L.R. 620, 24 W.L.R. 355, 4 W.W.R. 702, in which the defendant corporation was held liable for flooding land by an improperly constructed ditch.

Portage Fruit Company v. Portage La Prairie (1913), 23 Man. L.R. 822, 14 D.L.R. 21, 25 W.L.R. 438, 5 W.W.R. 145, in which it was held that, in the circumstances, the defendant corporation was not liable for injury caused by the overflow of water from the highway.

Kenny v. St. Clements (1912-3), 24 Man. L.R. 51, 4 D.L.R. 304, (1913) 15 D.L.R. 229, 26 W.L.R. 432, 5 W.W.R. 1011, in which the defendant corporation was held liable for injury caused by flooding land due to the outlet for a ditch being insufficient.

Stott v. North Norfolk (1914), 24 Man. L.R. 9, 16 D.L.R. 48, 26 W.L.R. 774, in which it was held that a landowner, who has suffered injury owing to his land having been flooded by the diversion by a municipal corporation of surface waters from their natural channel, is entitled to recover for the damages sustained since he became the owner of the land although the wrongful or negligent act was done before he acquired it, but not for the damages done before he became the owner.

Arder v. Winnipeg (1914), 24 Man. L.R. 727, 28 W.L.R. 534, 6 W.W.R. 1127, 7 W.W.R. 294, in which it was held that a municipal corporation is liable for injuries caused to a person using a public lavatory by the negligence of the servants of the corporation in failing to remove the ice and snow from the steps of the lavatory.

Thorsteinson v. North Norfolk (1915), 22 D.L.R. 34, in which the defendant corporation was held liable for flooding land by constructing a dam by which water was diverted from its natural course.

Mack v. Lake Winnipeg Shipping Company (1915), 25 Man. L.R. 364, 24 D.L.R. 128, 8 W.W.R. 523, in which the defendants were held liable for an injury caused by horses taking fright owing to the negligent operation of a steam waggon, which emitted smoke and cinders on the street in close proximity to the horses, and liable to frighten them, without precautions or warnings of its approach being taken.

In this case Kirk v. Toronto (1904), 8 O.L.R. 730, referred to in notes to s. 460, was followed.

NEW BRUNSWICK.

St. John v. Pattison (1880), Cameron's S.C. Cas. 537 (reversing Pattison v. St. John (1879), 18 N.B. 636), in which it was held that a municipal corporation, having statutory authority to alter and repair its streets and to permit steps and stairways to be built on the highway for the purpose of affording access to the houses on it, which raises the level of a street and supports the work in front of a house by a wall and a fence upon it, which has the effect of cutting off a landowner's direct access to the street, is not liable for the damage which is occasioned to him by so doing.

The ground upon which this decision was based was that, as what was done was done under the authority of a statute, it was not a wrongful act, according to the well-established rule as stated by Blackburn, J., in his judgment before the House of Lords in Hammersmith and City Railway Company v. Brand (1869), L.R. 4 H.L. 171, 196.

Crawford v. St. John (1898), 34 N.B. 560, in which it was held that a municipal corporation is answerable for the negligent performance of his duties by an officer who is appointed and removable by the corporation, even where the duties are imposed by the legislature and not by the corporation, and the corporation was held liable for the negligence of an officer the result of which was to deprive the plaintiff of his right to vote.

Collins v. St. John (1907), 38 N.B. 86, 2 E.L.R. 490, in which the corporation was held liable for negligence in operating a ferry.

NOVA SCOTIA.

Lloy v. Dartmouth (1897), 30 N.S. 208, in which it was held that where land is injured by being overflowed, the owner's damages are the difference between the value of the land immediately before the injury and the value as reduced by the injury, and that the damages are not to be assessed in view of the loss of profit for the period during which the use of the land was lost and in relation to what it would cost to restore the land to the condition in which it was before the injury.

Messenger v. Bridgetown (1900), 33 N.S. 291-2, (1901) 31 S.C.R. 379, in which it was held that the corporation was not liable for injuries sustained owing to a horse having stumbled while passing at night over a mound of earth eight inches in height, which had been left in the highway after filling up a trench which had been dug for the purpose of laying a pipe across the highway.

James v. Bridgewater (1914), 20 D.L.R. 799, affirmed (1915) 49 N.S. 188, 24 D.L.R. 634, in which it was held that a municipal corporation is answerable for the damages caused by an overflow of lands where it permits the accumulation of water in a lake after a heavy rainfall, and later, at the end of the rain, releases the water in large volumes on the lands of riparian owners.

Quebec.

Breux v. Montreal (1896), Q.R. 9 S.C. 503, in which it was held that a municipal corporation was liable in damages to a person who contracted a fever in consequence of a shed adjoining his residence having been used for the disinfection of the clothing of the fever patients of its hospital and for the disposal of the bodies of persons, who had died from fever, awaiting burial.

Montreal v. Gauthier (1897), Q.R. 7 Q.B. 100, noted under s. 325.

Montreal v. Mulcair (1898), 28 S.C.R. 458, in which it was held that an action does not lie against a municipal corporation by the proprietor of land for damages to it occasioned by the mistake or misfeasance of the corporation or its officers alleged to have occurred before the acquisition of his title to the land, and that a municipal corporation is not civilly responsible for acts of its officers or servants other than those done within the scope of their authority as such.

Wilshire v. St. Louis du Mile-End (1899), Q.R. 8 Q.B. 479, in which it was held that a municipal corporation which, under the Municipal Code, grants to a company the privilege for a term of years of furnishing water to the ratepayers, who are obliged to pay for it according to the established tariff as soon as the company elects to furnish it to them, is not responsible because the company does not furnish to a ratepayer the quantity of water which he needs.

Belair v. Montreal (1899) Q.R. 15 S.C. 494, in which the facts were that a municipal corporation, without the ordinary formalities of expropriation, laid water pipes in a strip of the plaintiff's land, removed his fences, and the land was used by the public as part of a street, but these acts did not appear to have been authorized by the council, and the intention to expropriate the property was abandoned, and it was held that these acts constituted a mere trespass, and were not taking possession of the property so as to make the corporation responsible to the owner for its value.

Burland v. Montreal (1901), Q.R. 19 S.C. 574, in which it was held that where a municipal corporation has authorized the construction of a permanent sidewalk in a street and it is laid close up to the wall of an abutting house, occupying a small strip of the owner's land, and the placing of the sidewalk in that position was not authorized by the corporation and it is willing to surrender the possession of the strip to the owner, he cannot maintain an action to recover the value of it.

Rochon v. Montreal (1902), Q.R. 22 S.C. 42, in which it was held that municipal councils, in deciding upon the extension of streets and municipal works generally into new districts, act judicially, and, when so acting in good faith, are not responsible for damages caused to individuals by delay in determining upon such works, especially where the delay is occasioned by due regard to economic and prudent administration.

Dallas v. St. Louis (1902), 32 S.C.R. 120, in which it was held that a municipal corporation which has statutory authority to regulate the connection of private drains with the sewers, "owners or occupants being bound to make and establish connections at their own cost, under the superintendence of an officer appointed by the corporation," is not liable for damages sustained through the negligence of the employees of a person in carrying on blasting operations while sinking trenches to connect his private house drains with the main sewer under permits granted by the corporation.

Brunet v. Montreal (1903), Q.R. 23 S.C. 262, affirmed on review, in which it was held that a municipal council has no right, in the administration of its by-laws, to act with partiality, and where it tolerates the violation of a by-law it is responsible for the damages so caused.

Ratteau v. Drosse (1905), Q.R. 28 S.C. 208, in which it was held by Curran, J., that a municipal corporation is not liable for torts committed on its thoroughfare in breach of a by-law of its council.

In this case the plaintiff was injured by a discharge of fireworks in contravention of a by-law, and his claim was that the corporation was guilty of gross negligence in not providing police protection on the occasion in question, when a large concourse of persons were returning from the celebration of the French festival.

Drolet v. Montreal (1851), 1 L.C.R. 408, in which it was held that the defendant corporation was not liable for bodily injuries received, and wearing apparel lost, when the plaintiff was beaten during a riot, was followed.

In that case it was laid down that, "there are two classes of obligations affecting corporations: (1) Those arising out of their ministerial character; and (2) such as attach to them in their high public municipal character. The liability of a corporation is only for acts or omissions purely ministerial, never for cases where it is the reflective agent of the state, having to exercise a *quasi* judicial discretion. In this case the duty of the corporation was not of a ministerial nature, but of a high judicial character."

The last two cases are in accordance with the view of the Ontario Courts: see Brown v. Hamilton (1902), 4 O.L.R. 249.

Dubois v. St. Louis (1906), Q.R. 30 S.C. 289, in which it was held that where a by-law of a municipal council imposes on those who wish to erect buildings the obligation to have fixed by civic officials the grade and alignments according to which the foundations must be laid, an error of figures and information furnished by the officials of the corporation makes it liable for damages immediately and directly resulting therefrom.

Murdock v. Westmount (1908), Q.R. 33 S.C. 243, 4 E.L.R. 409, in which it was held that a municipal corporation is liable for damages to buildings from vibration caused by the use of explosives in the prosecution by it of work under legislative authority, however carefully such use is made.

Belanger v. St. Louis (1909), 6 E.L.R. 277, in which it was held that the defendant corporation was not liable for loss by fire occasioned by insufficient pressure of waterworks owned and operated by a company under the authority of a by-law of the defendant corporation, the failure to give the necessary pressure being in contravention of the company's agreement with the corporation.

Salois v. St. Francois du Lac (1909), Q.R. 36 S.C. 69, in which it was held that a landowner, in default in maintaining in repair his front road, has no recourse against the municipal corporation which does the work for slight damage thereby caused to his land.

Dudevoir v. Waterville (1909), Q.R. 37 S.C. 389, affirmed (1910) Q.R. 20 K.B. 306, in which it was held that the corporation of a municipality, in which "coasting on bobsleighs" is carried on in the streets as a common practice, that does nothing to put a stop to it, is guilty of negligence and liable in damages for accidents to passers-by.

Roulier v. Magog (1909), Q.R. 37 S.C. 246, in which it was held that a municipal corporation which permits children of any age to play upon the ground around a public reservoir in which the water is deep, without having it sufficiently protected by a fence or otherwise against the danger of their falling into it, is guilty of negligence and liable in damages for the death of a child drowned there.

Marbleton v. Ruel (1912), Q.R. 21 K.B. 434, 1 D.L.R. 624, in which it was held that a municipal corporation is not entitled to place a dam at the outlet of a lake for the purpose of raising its level when doing so diminishes the enjoyment of the mill owners having rights to the water flowing from the lake by depriving them of their usual quantity of water at certain seasons.

It was also held that riparian owners have a right of action to compel the removal of a dam that seriously interferes with their riparian rights, and to compel the restoration of the former *status in quo*, so that the waters may escape from the lake at their natural level, and this without prejudice to their claim for damages.

Quesnel v. Emard and Montreal (1912), 8 D.L.R. 537, in which it was held, following Brousseau v. Quebec (1912), Q.R. 42 S.C. 91, that a municipal corporation is not liable at law for damages resulting from the destruction of the property of a ratepayer by fire as a result of an inefficient fire department unless the fire is the direct result of a tort formally authorized by the corporation; that the power given to corporations of cities and towns by a Quebec statute to establish a fire department is a facultative power, and does not oblige them to protect the property of the ratepayers in case of fire or make them responsible for fire losses; that a company or person under obligation by contract to supply a corporation with all the water "necessary for the needs of the" municipality is not bound to supply water required to put out a fire breaking out in the municipality, but only what is required for the ordinary needs of the ratepayers; and that a person to whom a franchise to supply water to the citizens of a municipality has been granted by a municipal corporation has no larger or greater responsibility than the corporation would have had, had the corporation itself exercised the power delegated.

MacIntosh v. Westmount (1912), 8 D.L.R. 820, in which it was held that where a building is established or used as a hospital for all contagious diseases, its establishment and user as such must be in compliance with and governed by s. 43 (w) of the by-laws of the Board of Health of the Province of Quebec.

In the same case the defendant corporation was restrained from the further use of a hospital for the treatment of contagious diseases, and especially smallpox patients, it appearing that the premises were unsuited for such a purpose and that their establishment and maintenance were in contravention of law, that it was in close proximity to the dwelling-house of the plaintiff, access to which was interfered with, if not prevented, by barriers erected across a road and put up by the hospital authorities. Such a hospital is a nuisance.

Hull v. Bergeron (1913), 9 D.L.R. 28, in which it was held that where a statute provides for indemnity to be fixed by arbitration, such recourse does not deprive the injured person of his common law recourse, if he has any, and he may, therefore, sue for damages without any reference to arbitration.

The law is otherwise in Ontario.

Payette v. Montreal (1915), Q.R. 47 S.C. 169, 25 D.L.R. 857, in which it was held that a municipal corporation is not liable for injuries caused to children skating on sidewalks in contravention of a municipal by-law.

Deschamps v. Montreal (1915), Q.R. 48 S.C. 351, in which the defendant corporation was held liable for injuries due to a runaway horse caused by noise and fumes from the operation of a steam drill, which was being operated without adopting practicable precautions to avoid the accident.

Gelinais v. Montreal (1916) 29 D.L.R. 228 in which the corporation was held liable for injuries caused by the bursting of one of its water mains.

Art. 1054 of the Civil Code was applied. It creates a presumption of fault against the guardian of the article from which the damage or injury arose and it was held that the corporation had not rebutted this presumption but on the contrary it was guilty of imprudence in using the water-pipe after knowledge that several of such pipes had been broken after being laid down and put into service.

SASKATCHEWAN.

Foley v. South Qu'Appelle (1910), 3 S.L.R. 412, 15 W.L.R. 264, in which it was held that the entry of a road "boss" under instructions from the reeve and one of the members of a council upon land for the purpose of making a road diversion is a trespass, and the corporation is liable for the damages resulting from it. The landowner is not, however, entitled to damages for having a part of his farm separated from the rest by the road diversion where proceedings for expropriating the land for the road are pending, as damages occasioned by the severance will be taken into consideration in determining the compensation to which he is entitled.

Armour v. Regina (1915), 8 S.L.R. 368, 29 D.L.R. 676, 33 W.L.R. 312, 9 W.W.R. 928, in which it was held, applying East Freemantle v. Annois, L.R. (1902) A.C. 213, that where a corporation acting in the execution of a public trust and for the public benefit does an act which it has statutory authority to do, and does it in a proper manner, an individual suffering special injury by reason of the act cannot maintain an action. He is without remedy unless a remedy is provided by the statute.

Wilkes v. Saskatoon (1916) 32 D.L.R. 42, in which the corporation was held liable for injuries sustained owing to a rope attached to a trolley pole on the corporation's railway being allowed to hang loose and when blown about by the wind entangling the plaintiff who was waiting to take passage on the railway.

TERRITORIES.

McGillivray v. Moose Jaw (1907), 7 Terr. L.R. 465, 6 W.L.R. 108, in which it was held that the defendant corporation was liable for injuries sustained owing to its neglect to guard a ditch dug in the highway.

LIABILITY FOR OTHER WRONGS.

SURFACE WATERS.

A land owner has no right of drainage across the highway on which his land abuts for surface water, and a corporation is not liable for closing up a culvert which had been in existence for many years and through which the surface water from the land had been accustomed to pass: Darby v. Crowland (1876), 38 U.C.R. 338.

See also Williams v. Richards (1893), 23 O.R. 651, in which it was held that, contrary to the rules of the civil law, an occupant or owner of land has no right to drain into his neighbour's land the surface water from his own land.

Art. 501 of the Civil Code provides that lands on a lower level are subject towards those on a higher level to receive such waters as flow down from the latter naturally, without the agency of man. The proprietor of the lower land cannot raise any dam to prevent this flow. The upper proprietor can do nothing to aggravate the servitude of the lower land.

The proprietor of lower land is not bound to receive the waters from the higher land when they do not flow down owing to the natural grade, but are collected and turned upon the lower land by means of artificial works, which change the natural character of the place: Lapointe v. Berthier (1896), Q.R. 10 S.C. 24.

A municipal corporation is liable for interfering with surface waters and thereby aggravating the servitude to which by the civil law lower land is subject in respect of such waters: Roy v. St. Louis du Mile-End (1896), Q.R. 10 S.C. 503.

No one has the right to make or to aid in making on his own land a watercourse of a greater depth than is necessary for the draining of his land (M.C., art. 881). A *proces-verbal* which contravenes this provision of the law and subjects to drainage works lands which by reason of their situation cannot benefit by the works is illegal and void *pro tanto*, and the injured proprietor has the right to a declaration of nullity as to him.

Such a violation of the law constitutes an aggravation of servitude that the proprietor of the lower land is always admitted to repudiate, although he has temporarily submitted to the *ultra vires* provisions of the *proces-verbal*.

Dionne v. Drummond (1916), Q.R. 50 S.C. 22.

ENFORCEMENT OF ULTRA VIRES BY-LAWS.

A municipal corporation is not liable for damages arising out of the enforcement of an ultra vires by-law passed by the council under a misconception of its powers unless such a liability is expressly or impliedly imposed by statute, nor where a person takes out a license under a by-law which unlawfully restricts his rights and who is damnified by the restricted form of the license is the corporation under a liability to him: Pocock v. Toronto (1896), 27 O.R. 635. See also Dillon on Municipal Corporations, 5th ed., s. 1630.

Wheatley v. Charlottetown (1898), 18 C.L.T. Occ. N. 188 (P.E.I.).

Cushen v. Hamilton (1902), 4 O.L.R. 265; Hall v. Moose Jaw (1910), 3 S.L.R. 22, 12 W.L.R. 693.

Cushen v. Hamilton was followed in O'Grady v. Toronto (1916), 37 O.L.R. 139, 31 D.L.R. 632, a case of payment of taxes under a mistake of law. Compare Royal Insurance Company v. Montreal (1906), Q.R. 29 S.C. 161, noted under s. 249.

DITCHES AND WATERCOURSES.

A corporation of a municipality within the limits of which a ditch is constructed under the Ditches and Watercourses Act, in accordance with the award of its engineer made in assumed compliance with the requisition of the ratepayers interested, is not liable for damages caused to a resident of the township by the construction of the ditch even though the requisition be defective: Seymour v. Maidstone (1897), 24 A.R. 370.

WATER SUPPLY.

There is no statutory obligation on the part of a municipal corporation to supply to a consumer water which is free from impregnation with sand, and, in the absence of a contract to do so, the corporation is not liable for the damages sustained by a consumer owing to his elevators, operated by water supplied by the corporation, being so impregnated: Scottish Ontario v. Toronto (1899), 26 A.R. 345.

LIABILITY FOR ACTS OF POLICE CONSTABLES.

The cases as to the liability of a municipal corporation for the unlawful acts of a police constable are conflicting, but the weight of authority is in favour of the view of the Ontario Courts that there is no liability. It was so decided in Winterbottom v. Board of Commissioners of Police of the City of London (1901), 1 O.L.R. 549, 2 O.L.R. 105, and in Kelly v. Barton (1895), 26 O.R. 608, 22 A.R. 522.

It was said by the Chancellor, in the latter case, that police officers are not officers or agents of the corporation, but are independently appointed by the Board of Police Commissioners as agents of good government for the benefit of the municipality; that the corporation cannot be made liable for their illegal acts unless they are ratified by the council, and that a resolution to defend the officers, when sued, is not a sufficient ratification: 26 O.R. at p. 623.

The same conclusion was reached by the Supreme Court of Canada in McCleave v. Moncton (1902), 32 S.C.R. 106, 6 Can. Cr. Cas. 219.

CASES IN OTHER PROVINCES AS TO THE SAME QUESTION.

ALBERTA.

Pon Yin v. Edmonton (1915), 31 W.L.R. 402, 8 W.W.R. 809, 24 Can. Cr. Cas. 327, in which the view of the Ontario Courts was adopted and McCleave v. Moncton (supra) was followed.

MANITOBA.

Wishart v. Winnipeg (1887), 4 Man. L.R. 453, in which the same view was adopted as that taken by the Ontario Courts, and Hafford v. New Bedford (1860), 82 Mass. 297, was referred to.

NEW BRUNSWICK.

McCleave v. Moncton (1901), 35 N.B. 296, (1902) 32 S.C.R. 106, 6 Can. Cr. Cas. 219 (supra).

QUEBEC.

Tremblay v. Quebec (1903), Q.R. 23 S.C. 266, in which it was held that a police officer is not the agent of a municipal corporation and the corporation is not liable for his acts unless it has authorized or adopted them.

Milton v. La Cote St. Paul (1903), Q.R. 24 S.C. 541, in which it was held that where a writ of arrest, signed by the mayor and entrusted to special constables for the municipality, is executed beyond its limits, the municipal corporation is not responsible because the constables, in effecting the arrest, did not act in the performance of the duties for which they were employed.

Bourget v. Sherbrooke (1905), Q.R. 27 S.C. 78, in which it was held that a municipal corporation is responsible for the damages caused by an arrest made without reasonable and probable cause by a policeman in the employment of and wearing a uniform provided by the corporation, and the fact that, when the arrest was made, he was off duty is no defence.

Rey v. Montreal (1910), Q.R. 39 S.C. 151, in which it was held that members of a police force appointed by a municipal council are under obligation to enforce the provisions of the law and of by-laws issued under statutory authority. They are not agents of the corporation, and it is not liable for the consequences of their action.

Levinson v. Montreal (1911), Q.R. 39 S.C. 259, in which it was held that municipal corporations are liable for damages caused in the performance of their duties by police officers, appointed, paid and dismissable by them and subject to their orders.

Dube v. Montreal (1912), 7 D.L.R. 87, in which it was held that a municipal corporation is liable in damages to a person, arrested for drunkenness, under the authority of a by-law of the council, for injuries sustained by him owing to the negligence of a constable who had, in the performance of his duty under the by-law, arrested him.

Chevalier v. Three Rivers (1913), Q.R. 43 S.C. 436, in which it was held that an action lies against a municipal corporation for an illegal arrest made by a constable appointed and paid by the corporation.

Gaudreau v. Montreal (1915), Q.R. 48 S.C. 388, in which it was held that the defendant corporation was liable for the confiscation by one of its inspectors of meats not fit for consumption in a butcher shop without lawful cause and without complying with the formalities required by law.

SASKATCHEWAN.

Gibney v. Yorkton (1915), 31 W.L.R. 523, in which McCleave v. Moncton (supra) was followed.

LIABILITY FOR ACTS OF OTHER OFFICERS OR SERVANTS.

In Hesketh v. Toronto (1898), 25 A.R. 449, it was held that, although a municipal corporation is not bound by law to establish and manage a fire department, yet, if it do so, it is liable for injuries caused by the negligence of the servants employed by it in the department while in the performance of their duties, and the defendant was held to be liable for injuries sustained by a person who, while standing in the street, looking at a burning building, was knocked down and killed by the horses drawing a steam fire engine, which were running away, owing to the negligence of their driver.

This case was followed in Thomas v. Winnipeg (1914), 24 Man. L.R. 106, 16 D.L.R. 390, 27 W.L.R. 314, 6 W.W.R. 170, which was a similar case, and it was also followed in Garbutt v. Winnipeg (1909), 18 Man. L.R. 345, in which it was held that the corporation was liable for injuries sustained by an elector owing to defects in the compartment provided for marking the ballot papers; and in Shaw v. Winnipeg (1909), 19 Man. L.R. 234, which was the case of an injury caused by the negligence of a person employed in the defendant corporation's waterworks.

In McSorley v. St. John (1882), 6 S.C.R. 531, it was held that the defendant corporation was liable in an action for false imprisonment to the plaintiff for the damages he had sustained owing to a receiver of taxes, appointed by the corporation, having issued his warrant for the arrest of the plaintiff on a void assessment and his arrest upon the warrant.

It was held in Saunders v. Toronto (1898), 29 O.R. 273, that a municipal corporation is answerable for the negligence of a licensed carter, owning his own horse and cart, paid by the hour, who is hired by and is under the direction of its street foreman for the purpose of removing street sweepings, but this decision was reversed by the Court of Appeal, Moss, J.A., dissenting, (1899) 26 A.R. 265.

A municipal corporation is responsible for the acts of its officers in illegally placing arrears of taxes on the collector's roll and a subsequent distress for them: Caston v. Toronto (1898), 30 O.R. 16, affirmed, (1899) 26 A.R. 459; (1900) 30 S.C.R. 390.

PUBLIC HEALTH.

A municipal corporation, whose board of health fails to make effective provision by removing into a separate house or isolating them persons suffering from an infectious disease who come from abroad into the municipality, and sends them into another municipality, is liable to repay to the corporation of that municipality the reasonable expenses incurred in caring for them and preventing the spread of the disease: Logan v. Hurlburt (1896), 23 A.R. 628.

CASES NOT CLASSIFIED.

An employee of a company which had contracted to deliver coal at a school building went voluntarily to inspect the place where the coal was to be put, on the evening preceding the day upon which arrangements had been made for the delivery, and was accidentally injured by falling into a furnace pit on his way to the coal bin. He had not applied to the school board or the caretaker in charge of the premises before making his visit, and it was held that, in thus voluntarily visiting the premises for his own purposes and without notice to the occupants, he assumed all risks of danger from the condition of the premises, and could not recover damages: Rogers v. Toronto Public School Board (1896), 23 A.R. 597, (1897) 27 S.C.R. 448.

Before a building, which was being erected by competent contractors for a municipal corporation, had been taken over, a trap door in the roof, through the want of fastenings, was blown off, causing injury to a person on the street below. The trap door was a necessary part of the contract, which required all work to be done in a good and workmanlike manner and imposed responsibility on the contractors for all accidents which might have been prevented by them; damages were recovered against the corporation on the findings of the jury that there was negligence on its part in that the specifications did not stipulate for fastenings. The corporation, on the same evidence, sought to recover from the contractors, brought in as third party defendants, on the ground that the findings should be binding on them only as to the amount of damages and that the question of their liability should be afterwards tried. It was held that, under the circumstances, the corporation could not recover over against the contractors: McCann v. Toronto (1898), 28 O.R. 650.

In Gaul v. Ellice (1902),3 O.L.R. 438, a municipal corporation was sought to be made liable for maliciously enforcing an illegal warrant, but the action failed because, as was held by a Divisional Court, there was no proof of malice, and that, assuming knowledge by the corporation of the illegality of the warrant and the conviction on which it was based, are solution to indemnify the constable to whom the warrant was directed for acting upon it was ultra vires, and the corporation was not bound to make good any costs or damages in consequence of the resolution.

An action does not lie against a municipal corporation for mere inconvenience by having to travel two miles further resulting from the stopping up of a highway: Logan v. Logan (1904), 3 O.W.R. 558.

The remedy of a landowner for raising the level of a street, whether the work is done under a by-law or by the inherent authority of the municipal council as conservator of roads, is compensation, and an action does not lie: In re Dunn and Stratford (1905), 5 O.W.R. 65.

A commission appointed by the council for the control and management of its electrical power works is the statutory agent of the corporation, and an action for damages for personal injuries sustained owing to the negligence of the commission does not lie against the commission, but must be brought against the corporation: Young v. Gravenhurst (1910), 22 O.L.R. 291, (1911) 24 O.L.R. 467, Scott v. Hydro-Electric Commission of Hamilton (1914), 7 O.W.N. 385.

A person between whose lands and a navigable water there intervenes a marsh or morass is not a riparian owner and has no license by virtue of his proprietary right to pass over like marshy lands of another to reach deep water, and cannot, therefore, maintain an action for interference with riparian rights: Merritt v. Toronto (1911), 23 O.L.R. 365, 18 O.W.R. 613, (1912), 27 O.L.R. 1, 6 D.L.R. 152, (1913) 48 S.C.R. 1, 12 D.L.R. 734.

See also Rickey v. Toronto (1914), 30 O.L.R. 523, 19 D.L.R. 146.

Where it is uncertain whether the injuries of which the plaintiff complains were occasioned by the negligence of a municipal corporation or of The Bell Telephone Company, both of them are properly made defendants: Till v. Oakville (1913), 5 O.W.N. 443, 601.

A telephone company is properly proceeded against under third party procedure in an action against a corporation for injuries alleged to have been caused by the negligence of the corporation in the conduct of its electric lighting, the allegation of the corporation being that the injury would not have happened but for the negligence of the telephone company: Harker v. Oakville (1913), 5 O.W.N. 441, 601.

It was held by Middleton, J., in Guelph Worsted Spinning Company v. Guelph (supra), that the authority conferred by the Municipal Act on a corporation to erect a bridge does not authorize the construction of it at a place where it will obstruct the flow of the river or in such a way as to have the effect of doing so, at all events where it could have been easily erected elsewhere so as not to dam the stream.

Where property is injuriously affected by lowering the grade of a street, the damage happens once and for all, and the cause of action then accrues, and the statutory period limited for bringing an action for damages to property begins to run from that time: Randall v. Calgary (1916), 9 W.W.R. 1508 (Alta.).

A municipal corporation is not responsible in damages either for failure to enact ordinances, or unless, in exceptional cases of gross abuse, for failure to enforce them: per Cross, J., in Dudevoir v. Waterville (1910), Q.R. 20 K.B. 306.

See also Roy v. Montreal (1892), Q.R. 2 S.C. 305; Brown v. Hamilton (supra); Ratteau v. Drosse (supra).

LIABILITY IN CASE OF BUILDINGS DEMOLISHED TO PREVENT THE SPREADING OF FIRES.

See notes to s. 400, par. 33.

LIABILITY UNDER THE WORKMEN'S COMPENSATION FOR INJURIES ACT (4 GEO. V. c. 25).

This Act applies to the exercise and performance of the duties of:—

(a) A municipal corporation,
(b) A public utilities commission,

(c) Any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation,

(d) The board of trustees of a police village,

which are for the purposes of Part I of the Act to be deemed the trade or business of the corporation, commission or board of trustees, but the obligation to pay compensation under Part 1 applies only to such part of the trade or business as, if it were carried on by a company or an individual, would be an industry for the time being included in schedule 1 or schedule 2 and to workmen employed in or in connection with it: s. 2 (2).

These bodies are not bound to contribute to the accident fund, but are individually liable to pay the compensation.

Names of municipal corporations.

9. The name of the body corporate shall be "*The Corporation of the County* [*United Counties, City, Town, Village, Township* (as the case may be)], of
(*naming the municipality*)." 3-4 Geo. V. c. 43, s. 9.

The proper corporate name of a municipal corporation ought to be used on all occasions and in all places; but slight variations in the use of corporate names, where substantially correct, have been held immaterial, even in matters of contract: Trustees of Port Rowan High School v. Walsingham (1873), 23 U.C.C.P. 11.

Council to exercise corporate powers.

10. The powers of a municipal corporation shall be exercised by its Council. 3-4 Geo. V. c. 43, s. 10.

It is not competent for a Council to delegate its powers unless expressly authorized to do so. See as to this notes to s. 249. In Biggar's Municipal Manual, p. 44, it is stated that "shall" in this section is not imperative, and that the meaning would be clearer if "exercisable" were used instead of "exercised," but this is open to question.

Status and Powers of Municipal Councils.

Following the course of decisions in England, the Courts of Ontario assumed jurisdiction to sit in judgment upon the by-laws of councils passed with all proper formalities and within the limits of the authority conferred upon them by the legislature, and to declare by-laws to be invalid if, in the judgment of the Court, they were unreasonable, and, in effect, to substitute for the judgment of the councils that of the Courts, and to ignore the fundamental difference which exists between other corporations and those whose councils are representative bodies elected by the people to which have been entrusted powers of legislation and are in their legislative capacity a branch of the civil government of the province.

It was not until 1888 that British jurists awoke to the mistake that had been made in the manner in which the laws passed by representative bodies elected by the ratepayers were treated when the case of Slattery v. Naylor, L.R. (1888) 13 A.C. 446, came before the Judicial Committee of the Privy Council, and, while the jurisdiction to set aside by-laws of such bodies in extreme cases was not given up, the theory that a by-law could be treated as unreasonable merely because it does not contain qualifications which commend themselves to the minds of Judges appears to have been abandoned.

Another step forward was taken in 1898 when it was laid down by a specially constituted Divisional Court of five Judges, in Kruse v. Johnson L.R. (1898) 2 Q.B. 91, 14 T.L.R. 416, that in determining the validity of by-laws made by public representative bodies, such as county councils, the Court ought to be slow to hold that a by-law is void for unreasonableness, and that a by-law made ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it.

It will be observed that, although a step in advance was taken in this case, there remains a remnant of the old idea which Lord Sumner, in Rex v. Broad, L.R. (1915) A.C. 1110, 1122, 31 T.L.R. 599, referred to as the well-established rule that if by-laws "involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, 'Parliament never intended to give authority to make such rules.' "

With great respect it is submitted that such a view is at variance with the principles of representative government, and that it involves substituting for the judgment of municipal councils chosen by the electorate of the municipality on which the legislature has conferred authority to legislate, that of the Courts in matters as to which that authority extends, and to apply to what is adjudged to be objectionable, the remedy of setting aside the by-law instead of leaving any wrongs it may seem to inflict to be redressed by a change in the law to be brought about by the constitutional method of changing the municipal rulers.

In this province the Courts have gone far in the exercise of what has been spoken of in a reported case as a supervisory and paternal jurisdiction not only in quashing by-laws, but also upon the theory that municipal corporations and their councils stand in relation to the ratepayers in the position of ordinary trustees, by interfering with them in the management of the corporations' affairs and the disposition of their property.

Protests against that theory have been made by Judges, especially in recent years, and it has been lately declared by a Divisional Court that, while a municipal corporation or its council may be spoken of as trustees for the inhabitants of the municipality in the sense in which the Sovereign is spoken of as a trustee for the people, they are in no other sense trustees, but a branch of the civil government of the province, and, within the limits of the powers committed to them by the legislature—at all events in the absence of fraud—should be free from interference by the Courts: Norfolk v. Roberts (1913), 28 O.L.R. 593, 13 D.L.R. 463.

Plain speaking characterized the utterances of Middleton, J., in Rogers v. Toronto (1915), 33 O.L.R. 89, 91, 92, 21 D.L.R. 475, where he said:—

> "At one time the Courts assumed jurisdiction to review municipal legislative action, upon the ground that the action was unreasonable. There never was in Ontario any real foundation for such jurisdiction. The supremacy of the municipal legislative authority within the sphere of its delegated jurisdiction was not at first recognized. It was assumed that the municipality occupied some subordinate position, and that the principles applicable to the determination of the validity of by-laws of companies, or the rules and regulations of boards exercising a delegated authority, could be applied to municipal action.
>
> This assumed supervisory and paternal jurisdiction of the Courts, although founded in error, became well established. . . .
>
> But this jurisdiction so usurped by the Courts over municipal legislative action was never extended to the supervision of contracts and the elimination of terms that might be regarded as unreasonable."

The same learned Judge had previously said in a case in which a ratepayer sought unsuccessfully to be allowed to intervene in an action, and an appeal where the council, after consideration, had decided not to appeal:—

"The council elected by a majority of the electors has determined against an appeal. It is not open to an individual ratepayer or to a group of ratepayers, even if they constitute a majority, to overrule the decision of the constituted authority. The whole idea is repugnant to the established system of municipal government. If I allowed intervention here, why might I not allow a ratepayer to intervene in a 'damage action' where he thought the verdict against the municipality was unjust?": Stoddart v. Owen Sound (1912), 4 O.W.N. 171, 2.

Reference may also be made to what is said by the same Judge in dismissing an action brought by a ratepayer to restrain a municipal corporation from carrying out a sale of land which it had made: Parsons v. London (1911), 25 O.L.R. 172, 178, 179, 180; affirmed (1912), 25 O.L.R. 442, 1 D.L.R. 756, 21 O.W.R. 205.

See, also, on the same branch of the subject: Robertson v. Toronto (1909) 1 O.W.N. 259.

Another learned Judge (Riddell, J.) has been as emphatic as Middleton, J. He said, in In re McCracken and Sherborne (1911), 23 O.L.R. 81, 100:—

"Speaking for myself, I regret that our Courts have ever imported into the consideration of municipal by-laws the English practice in the King's Bench, when considering by-laws of corporations, whether common law and customary corporations or those deriving their being from Royal Charter."

"I venture to think that those on the spot, elected by the people, are better judges of what is or is not reasonable than His Majesty's Justices."

In In re Angus and Widdifield (1911), 24 O.L.R. 318, 323, he made use of the following language:—

"I reiterate the regret expressed in In re McCracken and United Townships of Sherborne *et al.* (1911), 23 O.L.R. 81, at p. 100, that 'our Courts have ever imported into the consideration of municipal by-laws the English practice in the King's Bench, when considering by-laws of corporations, whether common law and customary corporations or those deriving their being from Royal Charter.' I should be better satisfied if municipal councils elected by the people to govern them should be treated as other legislative bodies; then the only inquiries would be the power of the council to pass the legislation in question, and whether that power had been exercised in the manner prescribed by statute. But that is not the law—we must, under the decisions binding upon us, go into the question of the reasonableness of the by-law."

And what was said by the same learned Judge, in In re Simpson and Caledonia (1912), 3 O.W.N. 503-4, 1 D.L.R. 15, 20 O.W.R. 874, was even more emphatic:—

"No attempt should be made by the Court to interfere with the exercise by these legislative bodies (*i.e.*, municipal councils) of their constitutional functions. We have no more right to interfere with them, when they are within their powers, than with any other legislating body, parliament or legislature."

The voices of these Judges have not been voices crying in the wilderness, for what they advocated has received the approval of the legislature, and is embodied in subsection 2 of s. 249, and s. 323.

See also in re Davis and Creemore (1916), 38 O.L.R. 240, 242, in which Mulock, C. J. Ex. said: "The council had full authority from the Legislature to pass the by-law in question. Doing so was a legislative act and the Court has no more power to sit in judgment upon the reasonableness of the act of the council than in the case of an act of the Legislature. Where the council is acting entirely within its statutory powers the Court has no right to interfere."

The view of the Quebec Courts as to the jurisdiction of the Courts to supervise the regulations of municipal councils may be gathered from the following cases:—

Ste. Louise v. Chouinard (1896), Q.R. 5 Q.B. 362, in which it was said that the actions of municipal corporations, though subject to the reforming power and control of the Superior Court, will not be interfered with in matters left by law to their discretion unless fraud or invasion of private rights has been committed or a manifest wrong inflicted on an individual.

Pepin v. Massueville (1906), Q.R. 15 K.B. 261, in which it was said that the power of the Court in the exercise of its jurisdiction in the supervision and reformation of regulations of municipal councils as to highways can be exercised only in the case of abuse and injustice arising out of bad faith and so grave as to amount to oppression.

Similar language was used in Mercier v. Bellechasse (1907), Q.R. 31, S.C. 247, in which it was said that, in the absence of fraud or an undue invasion of private rights or of the wilful infliction of palpable and manifest wrong, the Superior Court will not use its reforming and revisory power to interfere with municipal corporations in matters left by law to their discretion.

In Vallieres v. St. Henri de Lauzon (1905), Q.R. 14 K.B. 16, reversing (1904), Q.R. 26 S.C. 447, it was held that the municipal Code does not confer upon municipal councils the right to sit in judgment upon the conduct of their members and having no rights or prerogatives other than those conferred upon them by the Code a resolution censuring the conduct of a member of the council is unlawful and should be rescinded, and to this effect the judgment of the Court declaring the illegality of the resolution should be inserted in the minute book of the council on the margin of the resolution; and it was also held that the corporation was liable for the acts of the council and it was condemned to pay nominal damages.

PART I.

FORMATION OF NEW CORPORATIONS AND ALTERATIONS OF BOUNDARIES OF MUNICIPALITIES.

"District," meaning of.

11. In this Part, "district" shall mean part of a township or parts of two or more townships which it is proposed to erect into a village or town or part of a township which it is proposed to add to another municipality, or the part so erected or added, as the case may be. 3-4 Geo. V. c. 43, s. 11; 5 Geo. V. c. 34, s. 2.

This section is new.

Erection of village.

12. Under and subject to the provisions and conditions hereinafter mentioned, a district may be erected into a village by the council of the county in which it is situate, or if the district comprises parts of two or more counties by the council of the county in which the larger or largest part of the district is situate. 3-4 Geo. V. c. 43, s. 12.

Under the previous Act it was necessary that by-laws should be passed by the councils of the counties, parts of which it was proposed should be embraced in the village. Under the new law the by-law is to be passed by the council of the county in which the larger or largest part of the district is situate.

Procedure for erection of village.

13.—(1) Where a petition, signed, if the district or part of it lies within one mile of the limits of a city having a population of not less than 100,000, by at least two-thirds and in other cases by at least one-half of the freeholders and resident tenants of the district whose names are entered on the last revised assessment roll of the municipality in which the district is situate, and in the case of tenants who have been resident in the district for at least four months next preceding the presentation of the petition, all of the petitioners being British subjects of the full age of 21 years, and at least one-half of them freeholders, praying for the erection of the district into a village, is presented to the council, the council, if the district has a population exceeding 750, shall, within three months after the presentation of the petition, pass a by-law erecting the district into a village, declaring the name which it shall bear and its boundaries. 3-4 Geo. V. c. 43, s. 13 (1); 5 Geo. V. c. 34, s. 3.

"Petition."—Several petitions in the same terms had been signed. All but the signatures was detached from all but one of them, and the parts containing these signatures were attached to that one, and it was presented to the council. The document presented without these signatures was not sufficiently signed. It was held that the petition was not sufficiently signed, the ground of the decision being that the document sent to the council was "not actually signed by the electors whose names were appended to it. To that document as a physical entity they never placed their signatures, and it was not . . . a petition in writing signed by twenty-five per cent. of the electors within the meaning of the statute;" and it was also said by Anglin, J., that the "statute confers no discretion upon the council, and it cannot escape the duty imposed by erroneously deciding that the petition is in any respect insufficient" In re Williams and Brampton (1908), 17 O.L.R. 398, 407, 12 O.W.R. 1235.

The same conclusion was reached by Latchford, J., in In re Carter and Clapp (1908), 12 O.W.R. 1275, and In re Williams and Brampton was followed in Casson v. Stratford (1911), 3 O.W.N. 443. It was also followed in the following Manitoba cases:—Adams v. Woods (1909) 19 Man. L.R. 285, 12 W.L.R. 135, 491; and Larkin v. Polson (1909), 19 Man. L.R. 612, 12 W.L.R. 144, 491; and it was discussed in Rex ex rel. Sovereen v. Edwards (1912), 22 Man. L.R. 790, 8 D.L.R. 450, 22 W.L.R. 723, 3 W.W.R. 581. It was also followed in In re Mead and Moose Jaw (1911), 17 W.L.R. 14 (Sask.). See also In re Caswell and South Norfolk (1905), 15 Man. L.R. 620, 1 W.L.R. 327, and Moore v. McKibbin (1909), 19 Man. L.R. 461, 12 W.L.R. 358, in which latter case Adams v. Woods was distinguished.

A petition to submit to the vote of the electors a local option by-law filed with the clerk in one calendar year, with the intention that it should be acted upon in that year, but not acted upon, may be acted upon as a valid petition for the submission of such a by-law in the following year, even if a part of the territory of the municipality in which some of the petitioners resided has been in the meantime incorporated into a separate village, provided that there still remained on the petition enough names of persons still resident in the municipality: Hatch v. Rathwell (1909), 19 Man. L.R. 465, 12 W.L.R. 141, 376.

"British subject," *i.e.*, by birth or naturalization.

"We must presume the resident and assessed inhabitants of this country to be British subjects till something is shown to the contrary from which the Court can determine that they are aliens": per Robinson, C.J., Reg. ex rel. Carroll v. Beckwith (1854), 1 P.R. 278, 284.

"It is not, in my opinion, sufficient to swear that certain voters were aliens without giving particular evidence to show that they were aliens and how aliens, as by having been born in a certain place named out of the allegiance of the British Crown": Ib. p. 284.

Where the votes of persons born out of British allegiance who had taken the oath of allegiance at the polls are challenged, the burden of proving naturalization is upon the supporters of the votes: The Lincoln Election Case (1876), Hodgins, E.C. 500, 507-8.

The son of a woman who was a British subject, but was married to an alien and domiciled out of the allegiance of the British Crown at the time of the son's birth, is an alien: Doe dem Robinson v. Clarke (1844), 1 U.C.R. 37.

The son of a natural born British subject is a British subject though he was born out of and his father's residence was beyond British allegiance: Doe dem Hay v. Hunt (1854), 11 U.C.R. 367; see also Montgomery v. Graham (1871), 31 U.C.R. 57.

A person, born in the United States of British subjects, who came to Canada when he was nine months old and had resided there ever since is a British subject: the Stormont Case (1871), Hodgins, E.C. 21, 42.

A person, born in the United States of a father who was also born there, although he had lived in Canada for 21 years and had taken the oath of allegiance ten years before, but had not obtained a certificate of naturalization from the quarter sessions, was held to be an alien and not entitled to vote: the Brockville Election Case (1871), Hodgins, E.C. 129, 137.

A person, 33 years of age, who was born in the United States of a father born in Canada, but had lived in Canada from infancy, is a British subject: Ib. 138.

A British subject who had become a citizen of the United States had returned to Canada and had taken the oath of allegiance there, but had not obtained a certificate of naturalization, is not a British subject, and the burden of proving re-naturalization rests upon him: Reg. ex rel. Francis v. Young (1897), 33 C.L.J. 459.

A person born in Great Britain of alien enemy parents, though by s. 1 (a) of the British Nationality and Status of Aliens Act, 1914, he is to be deemed to be a British subject, is entitled, on attaining full age, to make a declaration of alienage under s. 14 (1) of that Act: Sawyer v. Kropp (1916), W.N. 284, 32 T.L.R. 650.

See also Halsbury's Laws of England, vol. 1, title Aliens, par. 662 et seq.

"Lies within one mile."

This distance is to be measured in a straight line on a horizontal plane: Lake v. Butler (1855), 5 E. & B. 92, 24 L.J.Q.B. 273.

Where there are no special controlling words, distance is not to be measured by the nearest available mode of access, but as the crow flies—that is, by the shortest line that can be drawn from one place to another on a map without regard to the curvature or any inequalities of the surface of the earth: Duignan v. Walker (1859), Johnson 446, 28 L.J. Ch. 867.

So *qua* an agreement not to practice as a solicitor within a stated distance of a town, the measurement is to be taken from the solicitor's office to the nearest part of the town and not to its centre: Cattle v. Thorpe (1900), W.N. 83. See also Jewel v. Stead (1856), 6 E. & B. 350, 25 L.J.Q.B. 294 and Mouflet v. Cole L.R. (1872), 8 Exch. 32.

In Rouleau v. Pouliot (1905), 36 S.C.R. 224, it was held by a majority of the Court that, in measuring distance in order to ascertain whether a bridge had been erected in contravention of a statute which prohibited the erection of a bridge within half a league above the bridge which the statute authorized to be erected or below it, the measurements should be made up stream and down stream from the site of that bridge as constructed.

"Freeholders."

An estate for life is the smallest freehold. An equitable estate of freehold is sufficient to qualify as a freeholder under this section: In re Flatt and United Counties of Prescott and Russell (supra notes to s. 5).

"Resident tenants."

The word "reside," where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep: per Bayley, J., in Rex v. North Curry (1825), 4 B. & C. 953, 959.

"Residence" has a variety of meanings according to the statute (or document) in which it is used: per Erle, C.J., in Naef v. Mutter (1862), 31 L.J.C.P. 359. It is an ambiguous word and may receive a different meaning according to the position in which it is found: per Cotton, L.J., in In re Bowie (1880), L.R. 16 Ch. D. 484, 487-8.

Powell v. Guest (1864), 18 C.B.N.S. 72, 80-1, 144 R.R. 399, 404-5; opinion of Moss, C.J.O., on a stated case, Sessional Papers, 1879, Appendix No. 68, p. 14; Reg. ex rel. Horan v. Evans (1899), 31 O.R. 448.

In In re Sturmer (1911), 24 O.L.R. 65, Middleton, J., had to consider the meaning of the word as applied to a voter on a local option by-law, and the effect of his temporary absence from his place of residence, and refers to several English cases, including Rex v. North Curry (supra).

In re Fitzmartin (1911), 24 O.L.R. 102, the same learned Judge had to consider the question again as applied to a farmer's son voter. The voter lived with his father on a farm, 25 acres of which were in the village of Newburgh (the municipality in which the voting took place), but the dwelling-house was situate on a part of the farm lying in the township of Camden. The question was whether the son resided within the municipality of Newburgh—and it was held that he did. The view of the learned Judge was that the "holding" or farm could not be subdivided, and that it could not be said that the farmer or his family resided in any one part of it, and that the residence required is "such a residence as can be fairly regarded as giving the voter the right to be recognized as a citizen of the municipality in question."

This judgment was affirmed by a Divisional Court, but there is nothing to show whether the reasoning of Middleton, J., was approved, probably because the objection was dealt with during the argument of the appeal: Ib. p. 105.

In In re North Renfrew Provincial Election (1904), 7 O.L.R. 204, 8 O.L.R. 359, was not referred to in the Fitzmartin case.

The question was whether a petitioner (Wright) was assessed in the municipality in which he resided for at least $1,000, and it was held that he was not. The facts were that Wright owned a farm situate partly in the township of Wilberforce and partly in the adjoining township of Stafford. His dwelling-house was situate in Stafford and the main part of his farm was situate on the other side of the road dividing the townships. He was rated on the last revised assessment roll for Stafford in respect of real-property in the sum of $750 only, but his whole assessment in the electoral district was over $1,000.

The reasoning of the Chief Justice of Ontario (Moss) is inconsistent with that of Middleton, J., in the Fitzmartin case, as is also his decision, unless the cases can be distinguished on the ground that in the North Renfrew case the farms were separated by a highway, while in the other case, as far as appears from the report, the farm was not so divided.

A similar question arose in Reg. ex. rel. Thompson v. Dinnin (1898), 3 Terr. L.R. 112, and a similar conclusion to that come to in the North Renfrew case was reached.

See also Stoke-on-Trent Borough Council v. Cheshire County Council L.R. (1915), 3 K.B. 699.

A person may have more residences than one: see Walcot v. Botfield (1854), Kay 534, 101 R.R. 719; In re Moir L.R. (1884), 25 Ch. D. 605; In re Wright L.R. (1907), 1 Ch. 231.

"Last revised assessment roll."—"An assessment roll shall be deemed to be finally revised and corrected when it has been so revised and corrected by the Court of Revision or by a Judge of the County Court on appeal as by this Act provided or when the time within which appeal may be made has elapsed": R.S.O., c. 195, s. 2, cl. (i).

"Population."—See s. 2, cl. (m).

"Full age of 21 years."—Full age is attained at the close of the day preceding the twenty-first anniversary of his birth, and, inasmuch as the law does not take notice of fractions of a day, a person is capable of doing a legal act at any time on that day: Halsbury's Laws of England, vol. 17, par. 125.

"Shall . . . pass a by-law."—The duty to pass the by-law if the district has a population of 750 is absolute, and may be enforced by mandamus.

Lot of petitioner to be designated.

(2) Opposite the name of every petitioner there shall be shown, by reference to the number of the lot, the land owned or occupied by him, and where it is or forms part of a lot laid down on a registered plan, the reference shall be to the number of the lot according to the plan, and the petition shall also show whether the petitioner is a freeholder or resident tenant.

Presentation of petition.

(3) A petition shall be deemed to be presented when it is lodged with the clerk, and the sufficiency of the petition shall be determined by him and his certificate shall be conclusive in reference thereto.

This subsection is new.

In re North Cypress, McRae v. Elmshurst (1908), 18 Man. L.R. 315, 9 W.L.R. 368, under an Act which contained no such provision it was held that the receipt of a petition for a local option by-law by the clerk of the municipality was not the receiving of it by the council.

Special census.

(4) The number of the inhabitants of the district shall be ascertained by a special census taken by direction of the council.

Paragraph 4 of section 398 authorizes the councils of all municipalities to pass by-laws for taking a census of the inhabitants, but does not appear to confer power for taking a census of the inhabitants of part of the municipality.

Subsection 4 confers this power, and authorizes the council to direct the taking of the special census of the inhabitants of the district, and this includes those parts of it which are situate in another county.

Time for passing by-law.

(5) The by-law shall not be passed before the expiration of one month after the presentation of the petition, or unless within two months next preceding the meeting of the council at which it is to be considered notice has been given of the intention of the council to take it into consideration.

(6) The notice shall be published at least once a week for two successive weeks, and shall contain a description of the district sufficiently full to indicate the land which it is intended to embrace in the proposed village.

Publication of notice as to consideration of by-law.

As to where the notice must be published, see s. 2, cl. (o). Where parts of two or more counties are included in the district, it would seem that the notice must be published in each of the counties. The notice should state the time when the meeting is to be held: In re Birdsall (1880), 45 U.C.R. 149; In re Campbell (1898), 34 C.L.J. 197.

(7) The council may require that the expenses of taking the census and of publishing the notice be paid by the petitioners, or that a sum sufficient to defray them be deposited with the clerk.

Expenses of census, etc.

(8) The clerk shall forthwith, after the passing of it, transmit a certified copy of the by-law to the Provincial Secretary, who shall cause notice of it to be published in the *Ontario Gazette*.

By-law to be published in Ontario Gazette.

This subsection is new. The object of it is to preserve an official record of the incorporation.

(9) After the expiration of three months from the publication of the notice of the by-law, and after the final disposition of any application to quash it made within that period, if the application is unsuccessful, the by-law shall not be liable to be quashed on any ground, and the village thereby erected shall be deemed to have been duly erected in accordance with the provisions of this Act. 3-4 Geo. V. c. 43, s. 13 (2-9).

Time for applying to quash by-law.

This subsection is new. Its purpose is to make valid the incorporation, if its validity is not attacked within the prescribed time or within the prescribed time after the final disposition of an unsuccessful application to quash the by-law. As to the time when the incorporation takes effect and as to holding the first election, see s. 31.

The by-law must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

"Deemed" means "adjudged" or "conclusively considered" for the purposes of the legislation; In re Rogers and McFarland (1909), 19 O.L.R. 622.

See also Bell v. Burlington (1915), 34 O.L.R. 410, 619, 620, 25 D.L.R. 269.

Area of town or village in a county.

14.—(1) Subject to subsection 2, the area of a town or village hereafter erected shall not exceed five hundred acres for the first thousand or less, with two hundred acres or fraction thereof added for each additional one thousand or fraction thereof in excess of one thousand of its population. 3-4 Geo. V. c. 43, s. 14 (1); 4 Geo. V. c. 33, s. 1.

In unorganized territory.

(2) In unorganized territory, the area of a town shall not exceed 750 acres for the first 500 of its population, with 300 acres or fraction thereof added for each additional 500 of its population or fraction thereof. 3-4 Geo. V. c. 43, s. 14 (2); 4 Geo. V. c. 33, s. 2.

No addition beyond prescribed area.

(3) An addition shall not be made to any town or village which will have the effect of increasing its area beyond the prescribed area. 3-4 Geo. V. c. 43, s. 14 (3).

Highways, parks, etc., not to be included in area.

(4) Land occupied by highways, parks, and public squares and land covered by water shall be excluded in determining the area. 3-4 Geo. V. c. 43, s. 14 (4); 4 Geo. V. c. 33, s. 3.

Annexation of village in two or more counties to one county.

15.—(1) Where a village comprises parts of two or more counties, it shall be annexed to, and form part of, that one of them which shall be agreed on by the councils, or which, failing an agreement within six months after the presentation of the petition, the Lieutenant-Governor in Council may by proclamation direct.

Agreement between councils as to annexation of village.

(2) If an agreement is come to, the clerk of each of the councils shall forthwith notify the Provincial Secretary of it, and if an agreement is not come to within the period mentioned in sub-section 1, shall forthwith, after the expiration of that period, notify the Provincial Secretary of the fact.

If councils agree notice to be published in Gazette.

(3) Where the councils agree as to the county to which the village shall be annexed, the Provincial Secretary shall forthwith, after notice of the agreement, cause to be published in the *Ontario Gazette* notice of the county to which the village has been annexed. 3-4 Geo. V. c. 43, s. 15.

16. A police village may be erected into a village in the manner and subject to the conditions mentioned in section 13. 3-4 Geo. V. c. 43, s. 16.

Erection of police village into a village.

As to police villages, see Part XXIII.

The by-law must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

17. The Municipal Board may, upon the application of the council of a village, annex a district to it where from the proximity of the streets or buildings in the district or the probable future exigencies of the village, the Board deems it expedient. 3-4 Geo. V. c. 43, s. 17.

Annexation of district to village.

This power was formerly vested in the Lieutenant-Governor. The by-law must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

18.—(1) The Municipal Board may annex land in unorganized territory to an adjacent incorporated township therein, and may also, on the application of two or more adjacent townships in such territory form them, with or without additional territory, into one township municipality, bearing such name as the Board may direct.

Annexation of land to township in unorganized territory.

This power was formerly vested in the Lieutenant-Governor-in-Council (R.S.O. 1897, c. 225, s. 64).

"Adjacent" is used in the sense of "in contact with": see Cave v. Horsell (1912), W.N. 19, L.R. (1912), 3 K.B. 533, 28 T.L.R. 184, 543; Derby v. Crompton (1913), 29 T.L.R. 673.

(2) The Board, on the application of the council of a city or town in unorganized territory, may annex to the city or town the whole or any part of an adjoining unorganized township, on such terms and conditions as may be determined by the Board. 3-4 Geo. V. c. 43, s. 18.

Annexation of land to city or town in unorganized territory.

"Adjoining."—See note to subs. (1). This subsection was first enacted by 2 Geo. V. c. 17, s. 35 (2).

The order of the Board must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

Incorporation of towns in unorganized territory.

19.—(1) Subject to subsection 2 of section 14, the Municipal Board may, upon the application of not less than 75 male inhabitants of the locality, each of the full age of twenty-one years, incorporate as a town the inhabitants of a locality having a population of at least 500, and situate in one or more of the provisional judicial districts, whether or not it lies within an existing township municipality. 3-4 Geo. V. c. 43, s. 19 (1).

Order of Board.

(2) The order of the Board shall declare the name which the town shall bear, and its boundaries, and the date when the incorporation shall take effect, and shall also provide for the apportionment, collection and payment over of the taxes for the current year. 3-4 Geo. V. c. 43, s. 19 (2); 5 Geo. V. c. 34, s. 4.

This section is taken from 2 Edw. VII. c. 30, (1, 2,) as amended by 2 Geo. V. c. 17, s. 35 (1).

The order of the Board must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

Erection of cities and towns.

20.—(1) The Board may erect a town having a population of not less than 15,000 into a city, and a village having a population of not less than 2,000 into a town, and declare the name which it is to bear.

Part of township may be included.

(2) Where, from the proximity of streets or buildings or the probable future exigencies of the newly erected city or town, the Board deems it desirable that part of one or more adjacent townships should be included in it, the Board may, subject to the provisions of sub-section 6, detach such part from the township or townships and annex it to the newly erected city or town.

These powers were formerly vested in the Lieutenant-Governor-in-Council.

See Bell v. Burlington (1915), 34 O.L.R. 410, 619, 620, 25 D.L.R. 269.

"Adjacent."—See note to s. 18 (1).

Division into wards.

(3) The newly erected city or town shall be divided into wards bearing such numbers or names as the Board may direct.

(4) The number of wards in the town shall not be less than three, and each of the wards in the city or town shall have a population of not less than five hundred.

Number of wards.

(5) Notice of the application for the erection of the town into a city or of a village into a town shall be published at least once a week for three months.

Notice of application.

See notes to s. 13 (6).

(6) Where it is proposed that part of one or more adjacent townships shall be embraced in the newly erected city or town, the notice shall so state and shall designate the part proposed to be embraced therein.

Part of township included to be described.

(7) The order shall be conclusive evidence that all conditions precedent to the making of it have been complied with, and that the city or town has been duly erected in accordance with the provisions of this Act. 3-4 Geo. V. c. 43, s. 20.

Force of order.

See notes to s. 13 (9).

The order must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

21.—(1) Where the council of a city or town by resolution declares that it is expedient that part of an adjacent township should be annexed to the city or town, and the majority of the municipal electors in such part petition the Board to add the same to such city or town, and after due notice of such resolution and petition has been given by the council of such city or town to the council of such adjacent township, and also, where the part is proposed to be added to a city or to a separated town to the council of the county in which the township is situate, the Board may, by order to take effect upon a day to be named therein, annex such part to the city or town upon such terms and conditions as to the adjustment of assets and liabilities, taxation, assessment, improvements, or otherwise as may have been agreed upon, or as shall be determined by the Board.

Adding territory to city or town.

"Adjacent."—See note to s. 18 (1).

The power conferred by this section was formerly vested in the Lieutenant-Governor in Council. It is difficult to say to what the powers with regard to "the terms and conditions as to the adjustment of assets and liabilities, taxation, assessment improvements or otherwise" that may be agreed on or imposed by the Board, extend. It is probable that they may extend to arranging for the division of assets and liabilities, the fixing of a rate of taxation or of assessment for the added territory, and to special provisions with regard to the making of improvements in it. The words are very wide and somewhat indefinite, but in Barton v. Hamilton (1909), 13 O.W.R. 1118, it was held that a proclamation of the Lieutenant-Governor in Council annexing to the city of Hamilton part of the township of Barton on, amongst other conditions, terms as to the assessment of the added territory, as to the supply of water to residents of the township, and as to such residents making connection with the city's sewers, had the same effect, being founded on the statute, as if they were contained in a statute, and that these terms were binding on the city corporation by force of the proclamation, and not as the result of an agreement between the two corporations providing for the annexation on these terms, because, as was held, the agreement had "no validity as an agreement": p. 1126.

The legislation in force when this case arose was R.S.O. 1897, c. 223, s. 24, as amended by 2 Edw. VII. c. 29, s. 3.

The words, "as may have been agreed upon," were not in section 24, but were added by 6 Edw. VII. c. 34, s. 1, and the effect of the change is to remove the objection to the agreement *qua* agreement that was held to be fatal to its validity.

In Wentworth v. Hamilton (1916), 54 S.C.R. 178, referred to in the notes to s. 38, the opinion was expressed by the Chief Justice and two other Judges of the Court (Idington and Duff), that the Board was not invested with authority to provide in its order extending the boundaries of the City of Hamilton, that such rights as those reserved by s. 24 of the County by-law (*i.e.*, the payment per mile by the railway company to the county corporation which was in question in that case) should on such extension of boundaries pass to the City in whole or in part.

The view of Idington, J., with whom the Chief Justice concurred, was that the *ejusdem generis* rule applied to the word "otherwise."

The legislation under consideration in that case was s. 24 of The Consolidated Municipal Act, 1903, as enacted by 6 Edw. VII. c. 34, s. 1, not 7 Edw. VII. c. 48, s. 1, as stated in the judgment, which did not contain the words "adjustment of assets and liabilities" and it is probable that if s. 38 had been applicable a different conclusion as to this point would have been reached.

In view of the difficulties that may arise, it is suggested that it will be prudent to obtain a special Act validating what has been done, and conferring upon the corporation the power and imposing upon it the duty to do what it has been provided shall be done.

In Malone v. Hamilton (1913), 4 O.W.N. 755, it was held that it was the duty of the corporation to supply water to a district which had been annexed to the municipality.

As to the right of a petitioner to withdraw, see notes to s. 23 (*infra*).

Amendment of order.

(2) The order may, before it takes effect, be amended in any respect by a further order, and may at any time when it does not correctly set forth the terms and conditions as to the adjustment of assets and liabilities, taxation, assessment, improvements or otherwise agreed upon, be amended to conform with the agreement.

Taken from 6 Edw. VII. c. 34, s. 1.

Board may order vote to be taken.

(3) The Board may direct that a vote be taken for determining whether or not the majority of the municipal electors of the part proposed to be annexed are in favour of its being annexed, and may fix the time and place for the taking of the vote, name the returning officer, and make such other provisions as may be deemed necessary. 3-4 Geo. V. c. 43, s. 21.

Before this subsection was enacted, there were doubts as to how it was to be ascertained whether the petition was signed by a majority of the electors in the part of the township proposed to be annexed. In In re McLeod and East Toronto (1904), 4 O.W.R. 26, affirmed Ib. 220, Anglin, J., declined to hold that a reference to the town clerk to report as to the sufficiency of the petition under section 23 (5) was improper, but see In re Halladay and Ottawa (1907), 15 O.L.R. 65.

In In re Medicine Hat By-law (1914), 8 A.L.R. 41, 20 D.L.R. 149, 7 W.W.R. 126, which was the case of a petition under The Early Closing Act (Alta), it was held that careful inquiry and investigation must be made by a municipal council re eiving a petition to satisfy the council that the petition is signed by the requisite two-thirds of the tradesmen affected. It is not enough that some person interested in the by-law makes an affidavit that, to the best of his knowledge and belief, the signatures obtained covered the statutory two-thirds.

The order of the Board must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

Adding territory to municipality in another county.

22. Where territory constituting or forming part of a local municipality becomes part of a local municipality in another county, it shall thereafter form part of that county except for the purpose of representation in the Assembly. 3-4 Geo. V. c. 43, s. 22.

The object of this section is to prevent automatic changes from being made in the electoral districts for the purpose of representation in the Assembly.

Annexation of town or village to adjacent urban municipality.

23.—(1) The Board may annex a town or a village to an adjacent urban municipality, where:

(*a*) The councils of the town or village and of the adjacent urban municipality by by-law assent to the annexation; and—

(*b*) The assent of the municipal electors of the town or village is given to the by-law of the council thereof.

Provisions of by-law.

(2) Subject to the provisions of subsection 5, the by-law may provide for the annexation unconditionally, or on such terms as may be deemed expedient.

New city or town may be erected.

(3) If the urban municipality to which the town or village is annexed has the requisite population, it may be erected into a city or town bearing such name as the Board may direct.

Division into wards.

(4) Such redivision into wards of the city or town as the annexation renders necessary shall also be made.

By-law to be submitted on petition of 150 electors.

(5) If a petition, signed by at least 150 electors of a town or village, praying that it may be annexed to an adjacent urban municipality, either unconditionally or on such terms as may be stated in the petition, is presented to the council of the town or village the council shall within four weeks after the presentation of the petition submit to the electors of the town or village for their assent thereto, a by-law providing for its annexation on the terms mentioned in the petition. 3-4 Geo. V. c. 43, s. 23.

[*As to formation of new Townships, see Rev. Stat. c. 3, s. 11.*]

See note to s. 21 (3) and s. 259 as to ascertaining the sufficiency of the petition.

A petitioner may not withdraw his signature unless it has been obtained by fraud.

Bannerman v. Lawyer (1900), 45 C.L.J. 484; In re McLeod and East Toronto (supra), note to s. 21 (3); Gibson v. North East Hope (1894), 21 A.R. 504; (1895), 24 S.C.R. 707; In re Keeling and Township of Brant (1911), 25 O.L.R. 181; In re Robertson and Colborne (1912), 4 O.W.N. 274, 8 D.L.R. 149.

A different view was taken by Britton, J., in In re Halladay and Ottawa (1907), 14 O.L.R. 458. That was the case of a petition for the passing of a by-law under the Ontario Shops Regulations Act, R.S.O. 1897, c. 257, and it was held that a petitioner might withdraw at any time before the final passing of the by-law. This decision was affirmed by a Divisional Court (1907), 15 O.L.R. 65, but only on the ground that the Council, contrary to the requirements of the Act, had delegated to the clerk the duty of ascertaining whether the petition was sufficiently signed. This case may possibly be distinguished from In re McLeod and East Toronto (supra), because of the difference in the language of the enactments which were under consideration.

Quebec Cases.

From the time that a sufficiently signed petition asking for the incorporation of a village is presented, the county council is seized of the petition, and the fact that certain of the signatures are withdrawn from it, so that the requisite number of names does not remain, does not take away the jurisdiction of the council, and its subsequent proceedings are not *ultra vires:* Mart n v. Arthabaska (1902), Q.R. 21 S.C. 119, reversing (1901), Q.R. 20 S.C. 329.

Tremblay v. Chicoutimi (1911), Q.R. 41 S.C. 333, is a decision to the same effect.

A county council which is requested by petition to erect certain territory into a village is not bound to give public notice of the consideration of the request. It has no discretion to exercise, but must appoint a special superintendent and direct him to report on the petition: Gravel v. Lake St. Jean (1908), Q.R. 33, S.C. 527.

"The requisite population" (see s. 20 (1).)

The order of the Board must be registered: The Registry Act, R.S.O. c. 124, s. 70 (3).

TOWNSHIPS.

24.—(1) The inhabitants of a township in unorganized territory having a population of not less than 100, and the inhabitants of a locality not surveyed into townships, having an area of not more than 20,000 acres and a population of not less than 100, may become incorporated as a township municipality.

Formation of townships in unorganized territory.

Petition for incorporation.

(2) Upon the receipt of a petition praying for incorporation, signed by not less than 30 of the resident householders of the township or locality, and defining the limits of the proposed municipality, and a deposit being made of a sum sufficient to defray the expenses of the meeting to be held as hereinafter mentioned, a Judge of the District Court of the Provisional Judicial District in which the township or locality is situate may call a meeting of the inhabitants of it to consider the expediency of becoming incorporated and to choose a reeve and four councillors for the proposed municipality, and he shall name a fit person to be the chairman of the meeting, and make such provisions as he may deem proper for the conduct of the meeting and the manner of choosing the reeve and councillors; and notice of the meeting shall be given in such manner as the Judge shall direct. 3-4 Geo. V. c. 43, s. 24 (1-2).

District Judge to call meeting.

Qualification at first election.

(3) Every resident householder of the full age of 21 years and a British subject shall be entitled to vote [and every resident male householder of the full age of 21 years and a British subject] to be elected as reeve or councillor at such meeting. 3-4 Geo. V. c. 43, s. 24 (3); 7 Geo. V. c. 43, s. 2 (*a*).

The words in brackets were inserted and the word "male" in first line struck out by 7 Geo. V. c. 43, s. 2 (*a*).

Chairman of meeting.

(4) The chairman shall preside at the meeting and shall record the votes given, and in the case of an equality of votes between two candidates for the office of reeve or councillor he shall give the casting vote, and he shall forthwith, after the close of the meeting, make a report in writing of the result of it to the Judge.

Report to Judge.

(5) The report shall contain a statement of the votes given for and against the proposed incorporation, and for and against each person proposed for reeve or councillor, and shall be verified by the oath of the chairman.

Declaration of incorporation.

(6) If it appears to the Judge from the report that a majority of the inhabitants present at the meeting voted in favour of incorporation, and that those so voting number or include not less

than 30 resident householders and no objection to the report or to the manner in which the meeting was conducted or the reeve and councillors were chosen has been filed with the Judge within 10 days after the receipt by him of the report, the Judge shall declare in writing, Form 1, the inhabitants of the township or locality to be incorporated in accordance with the prayer of the petition and state the persons who were elected as reeve and councillors and fix the time and place for the first meeting of the council, and shall forthwith transmit to the Minister of Lands, Forests and Mines, and to the Provincial Secretary, a certified copy of the declaration, and the Provincial Secretary shall thereupon cause notice of it to be published in the *Ontario Gazette.*

Hearing objections.

(7) If such an objection is filed within the prescribed time the Judge shall hear and determine the matter complained of, and if he finds that the complaint is well founded shall call a new meeting and perform the other duties assigned to him by subsections 2 and 6.

When incorporation complete.

(8) The incorporation shall be deemed to be complete when the Judge has signed the declaration, but shall not take effect until the 31st day of December following. 3-4 Geo. V. c. 43, s. 24 (4-8).

This section is new. Only resident householders may vote at the first election and only resident male householders are entitled to be elected.

A householder is an occupant of a separate portion of a house, such portion having a distinct communication with a public road or street by an outer door.

A statutory qualification for a municipal office described in the English version by the word "householder" and in the French by the words "qui tient feu et lieu," means, as the English word expresses it, one who lives in and is master of a house. Hence, one who lives in his father's house and carries on business therein, having the use of one room to sleep in and of another in which to receive customers, and who contributes to the household expenses, is not a householder within the meaning of the statute: Prévost v. Ménard, (1908), Q.R. 34, S.C. 31.

UNION OF TOWNSHIPS.

Union of townships.

25. A union of townships shall consist of two or more townships united for municipal purposes and having in common, as if one township, all offices and institutions established by law pertaining to township municipalities. 3-4 Geo. V. c. 43, s. 25.

"Adjacent."—See notes to s. 18 (1).

Annexation of new townships in unorganized territory to a county.

26. The Lieutenant-Governor in Council may, by proclamation, annex a township, or two or more townships lying adjacent to one another laid out by the Crown in unorganized territory, to any adjacent county, and may erect the same with another township of such county into a union of townships. 3-4 Geo. V. c. 43, s. 26.

Incorporation of union of townships.

27.—(1) The inhabitants of two or more townships in unorganized territory, adjacent to one another, and having in the aggregate a population of not less than 100, may become incorporated as a union of townships.

Proceedings.

(2) The proceedings for and incidental to the incorporation and the election of the members of the first council shall be the same as provided by section 24. 3-4 Geo. V. c. 43, s. 27.

Union of junior township, after separation, with adjoining township.

28. If two-thirds of the resident freeholders and tenants of a junior township whose names are entered on the last revised assessment roll petition the council of the county to be separated from the union to which it belongs, and to be attached to another adjoining township in the county, and the council considers that the interest and convenience of the inhabitants of the township would be promoted thereby, such council may separate it from the union, and may erect it with such adjoining township into a union of townships. 3-4 Geo. V. c. 43, s. 28.

"Resident freeholders."—See notes to s. 13 (1).

"Adjoining."—See notes to s. 18 (2).

Seniority of united townships, how determined.

29. The order of seniority of townships forming a union of townships shall be determined by the number of freeholders and tenants thereof whose names are entered on the last revised assessment roll, and the township having the largest number of them shall be the senior township, and the other or others the junior township or townships, and where there is no such assessment roll for all or any one or more of the townships their seniority shall be determined by the functionary or body by which the union is formed. 3-4 Geo. V. c. 43, s. 29.

[*As to annexation of gores, etc., to Townships, see Rev. Stat. c. 3, s. 14.*]

SEPARATION OF JUNIOR TOWNSHIP FROM UNION.

Junior township containing 100 freeholders, etc., may be separated from union.

30.—(1) When a junior township of a union of townships has 100 resident freeholders and tenants whose names are entered on the last revised assessment roll, the county council, if the union is not in unorganized territory, may separate the township from the union.

"Junior township."—See s. 29.

"Resident freeholders."—See notes to s. 13 (1).

(2) If the junior township is in unorganized territory and has a population of not less than 100, the Municipal Board, upon the application of not less than 15 of the assessed freeholders and tenants therein, may separate the township from the union.

Separation of junior township containing 50 freeholders, etc.

(3) If a junior township has 50, but less than 100 resident freeholders and tenants whose names are entered on the last revised assessment roll, and two-thirds of such resident freeholders and tenants petition the council of the county to separate the township from the union and the council considers the township to be so situated with reference to natural obstructions, that its inhabitants cannot conveniently remain united with the inhabitants of the other township or townships, the council may separate it from the union.

Names of townships after separation.

(4) Where a union of townships consisting of more than two townships is dissolved by the withdrawal of a junior township, the remaining townships shall constitute the union, which shall be continued under its former name, omitting that of the junior township.

Where union of two is dissolved.

(5) Where a union of townships consisting of two townships only is dissolved, the inhabitants of each of the townships shall become a separate corporation bearing the name of the township. 3-4 Geo. V. c. 43, s. 30.

DATE WHEN NEW INCORPORATION TO TAKE EFFECT.

When new incorporation to take effect.

31. Except where otherwise provided, where a new corporation is constituted under this Act, the incorporation shall take effect on the 31st day of December next after the proclamation, order of the Municipal Board or by-law by which it is effected, and except in the case of a town being erected into a city or a village into a town the functionary or body by which the new corporation is constituted shall fix the place for holding the first election, appoint a returning officer, and otherwise provide for the holding of the election according to law. 3-4 Geo. V. c. 43, s. 31 (1); 5 Geo. V. c. 34, s. 5.

Duties of returning officer.

(2) The returning officer shall perform all the duties in connection with the election which in other cases are to be performed by the clerk of a local municipality, and shall act as clerk of the new municipality until a clerk is appointed and has taken the oath of office. 3-4 Geo. V. c. 43, s. 31 (2).

As to registration of by-laws, etc., erecting a village, town or city, or enlarging, diminishing or altering the boundaries of a municipality, see The Registry Act, Rev. Stat. c. 124, s. 70.

This section applies to incorporations under ss. 12, 26, 28 and 30.

MATTERS CONSEQUENT UPON THE FORMATION OF NEW CORPORATIONS.

By-laws of old corporation to remain in force until repealed.

32. The erection of a district into a village or town, of a village into a town, or of a town into a city, or the separation of a township from a union of townships shall not affect the by-laws then in force in the district or municipality but the same shall remain in force until repealed by the council of the newly erected municipality, but nothing herein shall authorize the amendment or repeal of a by-law which the council by which it was passed could not lawfully amend or repeal. 3-4 Geo. V. c. 43, s. 32; 5 Geo. V. c. 34, s. 6.

Where a by-law is passed by a municipal council and the municipality is afterwards divided and part of it, with other territory, is formed into a new municipality, the council of the new municipality has power to repeal the by-law in so far as that municipality was affected by it: Doyle v. Dufferin (1892), 8 Man. L.R. 286. By-laws for contracting debts, so long as any part of the debt remains unpaid, and bonus by-laws, where the bonus is founded on an agreement with the corporation, are instances of by-laws that could not have been amended or repealed by the council by which they were passed.

"In force" means "having the force of law" or "being in existence": In re Denison and Wright (1909), 19 O.L.R. 5.

The question there was whether the section extended to a local option by-law, which had been duly passed, but would not become "operative until after the village was incorporated," and it was held that it did so extend.

What by-laws to be in force in territory annexed to a municipality.

33. Where a district or a municipality is annexed to a municipality, its by-laws shall extend to such district or annexed municipality, and the by-laws in force therein shall cease to apply to it, except those relating to highways, which shall remain in force until repealed by the council of the municipality to which the district or municipality is annexed, and except by-laws conferring rights, privileges, franchises, immunities or exemptions which could not have been lawfully repealed by the council which passed them. 3-4 Geo. V. c. 43, s. 33.

The sections providing for these annexations are ss. 20 (2), 21, 23.

"By-laws relating to highways" include by-laws for establishing and laying out highways and by-laws with regard to planting trees on highways, and probably by-laws prohibiting or regulating the running at large on highways of cattle, etc., and by-laws

1. Prohibiting driving on sidewalks (s. 400, par. 44).
2. Relating to the erection of dwelling-houses on narrow streets (s. 480) and in certain other cases (s. 481).
3. Relating to boulevards (s. 483, pars. 1, 2).
4. By-laws for the making and renting of areas (s. 483, par. 3).
5. Relating to bicycle and foot paths (s. 483, par. 4).
6. For raising money by tolls on highways (s. 483, par. 5).

7. Prohibiting obstructions or encroachments on highways (s. 491).
And such like by-laws.

The words, "Except by-laws conferring rights, privileges, franchises, immunities or exemptions which could not have been lawfully repealed by the council which passed them," were added by 3-4 Geo. V. c. 43, s. 33.

It had been held, in The Water Commissioners of the City of Windsor v. The Canada Southern Railway Company (1893), 20 A.R. 388, that the effect of the section before this amendment was that a by-law which had been passed by the council of the township of Sandwich West exempting the property of the defendants from taxation had ceased to apply after the annexation to the city of Windsor of a part of the township in which the property of the defendants was situate. In coming to that conclusion, the Court of Appeal distinguished Rural Municipality of Cornwallis v. C.P.R. Co. (1891), 19 S.C.R. 702, which it was said "would be very much in point but for section 54 of the Municipal Act" (p. 392).

The purpose of the amendment was to remedy this state of the law and, as applied to exemptions, to preserve the right to the exemption after the territory to which it applied had been annexed to another municipality.

Franchises granted to electric or street railway companies, electric light, power and heat companies, telephone companies, and gas companies, and fixed assessments may be referred to as matters to which the amendment applies.

Assets, Debts and Liabilities.

The sections under this sub-heading differ in their arrangement from the sections in the earlier Acts dealing with these matters, and a more compendious method of enactment has been adopted with the object of making more uniform the law as to them than it before was.

Liability for debts of union.

34. Where a junior township is separated from a union of townships the senior or remaining township or townships shall be liable to the creditors of the union for all the debts and obligations of the union. 3-4 Geo. V. c. 43, s. 35.

This separation is provided for by ss. 28 and 30.

Taxes for current year to belong to senior or remaining townships.

35. Where a junior township is separated from a union of townships all taxes imposed by the council of the union for the year in which the separation takes place shall be collected and paid over to the senior or remaining township or townships. 3-4 Geo. V. c. 43, s. 35.

"Shall be collected and paid over," *i.e.*, by the junior township.

36. After a junior township is separated from a union of townships the property of the union shall be disposed of as follows: Disposition of property upon dissolution of union.

(*a*) The real estate situate in the junior township shall become the property of that township; Real property.

(*b*) The real estate situate in the remaining township or townships shall be the property of the remaining township or townships;

(*c*) The two corporations shall be jointly interested in the other assets of the union, and the same shall be retained by the one, or shall be divided between them, or shall be otherwise disposed of, as they may agree; Other assets.

(*d*) The one shall pay or allow to the other, in respect of the disposition of the real and personal estate of the union, and in respect of its debts, such sum as may be just; Arrangement as to property and debts.

(*e*) If the councils of the two corporations do not, within three months after the first meeting of the council of the junior township, agree as to the disposition of the personal estate, or as to the sum to be paid by the one to the other, or as to the time of payment thereof, the matters in dispute shall be determined by arbitration; How to be determined in case of disagreement.

(*f*) The amount so agreed upon or determined shall bear interest from the day on which the union was dissolved; and the same shall be provided for by the corporation which is to pay it, as in the case of other debts. 3-4 Geo. V. c. 43, s. 36. Amount settled to bear interest.

"Determined by arbitration," *i.e.*, by arbitration under the provisions of Part XVI.

This section gives no guide to the arbitrators as to the principle upon which their award is to be based, but they are to determine what may be just to be done in respect of the matters with which they have to deal.

See In re the City of St. Catharines and the County of Lincoln (1881), 46 U C.R. 425, 430-1.

The question in that case arose on s. 22 of R.S.O. 1877, c. 174, which was made applicable by the Act incorporating the city of St. Catharines (39 Vict. c. 46), and it was as to the amount which the city should pay to the county for the expenses of the administration of justice and the other matters with which the section deals.

Osler, J.A., pointed out that the Act did not "lay down any principle or rule by which the arbitrators are to be governed in ascertaining the proportion" (p. 430). His view was that "the whole question, therefore, rests largely in the reasonable discretion of the arbitrators" (Ibid), and that the arbitrators were not wrong in taking, as they had done, the populations of the county and city as the basis on which to estimate the proportion to be paid by the city. He also pointed out that "to adopt the comparative assessments of the city and county as a basis would, owing to the practical difference in assessing city and county property, be entirely illusory and unjust" (p. 431).

"Assets."

In In re Albermarle and Eastnor, Lindsay and St. Edmunds (1880), 45 U.C.R. 133, the facts were that the township of Albermarle had been separated from the union which had existed between it and the townships of Eastnor, Lindsay and St. Edmunds, and an arbitration had taken place under the section then in force, which corresponds with this section. The arbitrators had credited to the remaining united townships against the portion of a debt due to the county of Bruce, which it was determined that these townships should pay $788.72 as their portion of the Municipal Loan Fund Grant made in 1874.

Upon an application to set aside the award, it was held that the arbitrators were wrong in crediting the portion of the Municipal Loan Fund Grant, in so far as it had been appropriated and expended before the dissolution of the union.

It has been held that school-houses in a town are not, but that granolithic sidewalks are, assets, and that, in valuing waterworks, mistakes in construction, though they may reduce the value of them as an asset, the town corporation "cannot claim any relief in that regard": In re Corporation of Southampton and the Corporation of the Township of Saugeen (1906), 12 O.L.R. 214.

The ground upon which school-houses were held not to be assets was that they "are vested in a separate board, and the limits of control by the school boards may be the same limits or different limits from that of the municipal corporation" (p. 217).

Bridges are not "property and assets": In re City of Ottawa and the Township of Nepean (1910), 2 O.W.N. 480, reversing (1910), 2 O.W.N. 49.

The provision of article 86 of the Municipal Code for partition of property in case of division or subdivision of municipalities refers to property under the private ownership of a municipality and not to that forming part of the public domain.

St. Denis Parish v. St. Denis Village (1905), Q.R. 15 K.B. 97.

Re-opening Agreement.

An agreement was made between the two corporations, after the separation of the city of Woodstock from the county of Oxford, as to the matters arising out of the erection of the city, and was acted upon. Several years after, an action was brought by the city against the county to recover the city's share of a fund standing at the credit of the county which was the result of collections from the local municipalities comprising the county, including the town of Woodstock, and was not taken into account in the negotiations or in the agreement. It was held that, in the absence of fraud or mutual mistake, the agreement was a bar to the action: City of Woodstock v. County of Oxford (1910), 22 O.L.R. 151; (1911), 44 S C.R. 603.

Liability to creditors and right to collect taxes where one municipality annexed to another.

37. Where one local municipality is annexed to another the corporation of the latter shall become and be liable to the creditors of the corporation of the former for its debts and obligations and all the property and assets of the corporation of the annexed municipality shall be vested in the corporation of the municipality to which it is annexed, and that corporation shall have the same rights and powers as respects the collection and recovery of all unpaid taxes imposed by the council of the annexed municipality including those for the year in which the annexation takes effect, as if such taxes had been imposed by the council of the municipality to which it is annexed. 3-4 Geo. V. c. 43, s. 37.

The creditors of the corporation of the annexed municipality become, under this section, creditors of the corporation of the other municipality.

This section must be read as subject to any terms and conditions as to the annexation which have been agreed on or have been determined by the Municipal Board under s. 23.

Adjustment of assets and liabilities where village erected or district annexed to a municipality.

38.—(1) Where a district is erected into a village or town, or is detached from one and annexed to another local municipality, there shall be an adjustment of assets and liabilities between the corporation of the municipality from which the district becomes or is detached and the corporation of the village or town or of the municipality to which the district is annexed, as the case may be, and if the interest of the district in the assets of the corporation of the municipality from which it becomes or is detached exceeds its proportion of the liabilities thereof, that corporation shall pay to the corporation of the village or town or of the municipality to which the district is annexed, as the case may be, the amount of the excess; but if the district's proportion of such liabilities exceeds its interest in such assets the corporation of the village or town or of the municipality to which the district is annexed, as the case may be, shall pay to the corporation of the municipality from which the district becomes or is detached the amount of the excess. 3-4 Geo. V. c. 43, s. 38 (1); 5 Geo. V. c. 34, s. 7.

Arbitration.

(2) If the corporations do not within three months after the separation takes effect agree as to such adjustment, the matter shall be determined by arbitration.

Where district becomes part of another county.

(3) Where a district is detached as well from a county as from the local municipality, of which it forms part, there shall be a similar adjustment of the assets and liabilities of the corporation of the county from which the district is detached between that corporation and the corporation of the county to which the district is annexed, and the provisions of subsections 1 and 2 shall *mutatis mutandis* apply.

When right to adjustment barred.

(4) If the corporation of the county, or of the local municipality, does not within three months after the separation takes effect, notify the corporation of the other county or local municipality that it requires an adjustment of the assets and liabilities, its right to claim an adjustment shall be barred.

Case of town erected into a city or a town or village annexed to city or separated town.

(5) Where a town not being a separated town is erected into a city, or a town or village is annexed to a city or separated town, there shall be a similar adjustment of the assets and liabilities of the corporation of the county from which the town or village is withdrawn between that corporation and the corporation of the city or separated town.

No allowance to city for interest in

(6) Where a town is erected into a city the city shall not be entitled, in the adjustment of assets and liabilities to any allow-

ance in respect of its interest in the court house or gaol of the county. 3-4 Geo. V. c. 43, s. 38 (2-6).

court house or gaol.

Subsections 1, 2, 3 and 4 deal with the formation of villages or towns out of parts of one or more township municipalities and with the annexation of such parts to another local municipality.

Subsection 5 deals with the annexation of an entire local municipality to another. See notes to s. 36.

A municipal corporation of a city to which a part of a township has been annexed is entitled under The Public Schools Act to the school houses and grounds situate within the annexed territory, and may sell and convey them if they are no longer required: In re Hamilton Board of Education and McNichol (1908), 12 O.W.R. 1015.

A county was the owner of a toll road, which it had purchased from a road company, and had given running rights over it to a railway company, for which privilege the company agreed to pay to the county an annual sum for each mile of the road which it used. Part of a township through which the road ran was annexed to the city, and, after the annexation, the railway company treated the city corporation as entitled to a proportion of the annual sum, equal to that which the mileage of the road within the city bore to its whole mileage, and the railway company had apportioned the annual sum in that way between the two corporations and had made its payments accordingly with the consent of the county corporation.

An action was brought by the county corporation against the railway company and the city corporation, claiming to recover the annual sum payable for 1914, and the sums which had been paid in previous years to the city corporation.

The claim was based upon the proposition that, notwithstanding the annexation, the part of the road which was within the city still remained the property of the county corporation. The county succeeded at the trial as to the year 1914, but failed as to the other years (Wentworth v. Hamilton (1914), 31 O.L.R. 659), but, upon appeal, the judgment at the trial was reversed and the action was dismissed ((1916), 35 O.L.R. 434, 28 D.L.R. 110), the Divisional Court being of opinion that, inasmuch as the annual sum was a payment per mile, the county was entitled to be paid only for the mileage of the road that after the annexation remained within the limits of the county.

Whether or not the conclusion of the Divisional Court was right depends upon the construction which should be placed upon the words "for every mile of railway operated on the said county roads under this by-law," which may mean for the whole mileage of the road as it existed when the by-law was passed or may mean for the mileage of the road from time to time situate within the limits of the county. The effect of the latter construction would be that the railway company would not be bound to pay for the mileage within the city, but that view of the extent of its liability does not appear to have occurred to the company. If the first of the suggested constructions is the right one, it would seem that the defendants had no answer to the plaintiffs' claim, and that the case was wrongly decided by the Divisional Court.

Since the foregoing was written the decision of the Divisional Court has been reversed by the Supreme Court of Canada, (1916) 54 S.C.R. 178.

Ownership of real estate in district erected into village or annexed to a municipality.

39.—(1) Where a district is erected into a village or town or is detached from one local municipality and annexed to another, the real estate belonging to the corporation from which the district becomes or is detached and situate therein, shall belong to and be vested in the corporation of the village or town or of the municipality to which the district is annexed, as the case may be, but this shall not apply to a town hall and the land on which it is erected or which is used or enjoyed in connection with it, but the same shall remain the property of the corporation of the municipality from which the district becomes or is detached. 3-4 Geo. V. c. 43, s. 39 (1); 5 Geo. V. c. 34, s. 8.

Collection of taxes.

(2) Except where otherwise provided, the taxes imposed by the council of the municipality from which the district becomes or is detached for the year in which it is detached shall belong to the corporation of that municipality and may be collected and recovered by it as if the district had not been detached but still remained part of the municipality. 3-4 Geo. V. c. 43, s. 39 (2); 5 Geo. V. c. 34, s. 9.

Powers to proceed with local improvements upon lands annexed to another municipality.
Rev. Stat. cc. 198, 193.

40.—(1) Where a work or service coming within the provisions of *The Municipal Drainage Act* or of *The Local Improvement Act* has been undertaken by a corporation, and after it has become liable for the carrying out of the same, any land liable to be specially assessed becomes a new municipality or is annexed to another municipality, the corporation of the municipality from which such land becomes or is detached may complete such work or service, and may enter upon and acquire any land lying within such new or other municipality necessary for the completion of such work or service; and may take all such proceedings, pass all such by-laws, make all such special and other assessments, impose all such special and other rates, issue and sell all such debentures, borrow all such money, and do all such other acts and things as are necessary to complete such work or service, and to provide for the cost thereof in the same manner as if the land so liable had not become a new municipality or been annexed to another municipality.

"Has become liable for the carrying out of the same," *i.e.*, has entered into a contract for the doing of it.

As to proceedings, etc., to be taken, see The Local Improvement Act, R.S.O. c. 193.

Municipality to which territory annexed to indemnify municipality undertaking work.

(2) The corporation by which the work or service was undertaken shall be indemnified by the corporation of the municipality which is constituted from such land or to which such land is annexed against all debts and liabilities incurred by it before the formation of the new corporation or the annexation of such land for or in respect of any such work or service to the extent to which the land lying within such new or other municipality was specially assessed and in adjusting the assets and liabilities consequent on the detachment of such land the debts incurred by the corporation of the municipality from which it was detached, for its share of the cost of such work or service, shall be taken into account.

Assumption of debt where all of land specially assessed is detached.

(3) Where the land specially assessed lies wholly within such new or other municipality, the corporation thereof shall be liable for the entire debt in respect of such work or service, and the clerk of the municipality from which the land was detached shall furnish the clerk of such new or other municipality with certified copies of all the by-laws relating to such work or service and the rates imposed by such by-laws shall be collected by the corporation of the new or other municipality, and that corporation shall pay the principal and interest of the debentures issued in respect of such work or service as they become due and shall indemnify the corporation of the municipality from which the land was detached against the same.

Collection of special rates, etc., where part only of land specially assessed is detached.

(4) Where part only of the land specially assessed lies within the new or other municipality the clerk of the municipality from which it was detached shall furnish the clerk of such new or other municipality with a certified copy of the by-law imposing the special assessment, and the corporation of such new or other municipality in each year in which a special rate upon such lands is payable, shall collect the same and shall pay over the sums collected to the treasurer of the municipality from which such land was detached, when and as the same are collected, and in the adjustment of the assets and liabilities consequent upon the detachment of such land the debts incurred by the corporation of the municipality from which it was detached for its share of the cost of such work or service shall be taken into account. 3-4 Geo. V. c. 43, s. 40.

Rates for payment of bonus to railways by part of township.

41. Where the land detached is subject to rates for the payment of a bonus or aid granted by a part of a township in aid of a railway, the provisions of section 40 shall, *mutatis mutandis*, apply. 3-4 Geo. V. c. 43, s. 41.

Jurisdiction of old council on formation of new corporation.

42. Where a district is erected into a village, or a village into a town, or a town into a city, or a township is separated from a union of townships, the council having authority in the district or municipality at the time of the erection or separation shall, until the council of the new corporation is organized, continue to have the same powers as before such erection or separation. 3-4 Geo. V. c. 43, s. 42.

"Organized."—As to when a council is organized, see s. 193 (3).

Section 62 of 3 Edw. VII. c. 19 contained a further provision as follows: "And all other officers and servants of the locality or municipality shall, until dismissed, or until their successors, if any, are appointed, continue in their respective offices with the same powers, duties and liabilities as before."

This provision was not carried into the section when 3 & 4 Geo. V. c. 43 was passed probably because it was deemed better that it should be left to the council which becomes, under the section, the *de facto* council of the new municipality until its council is organized to appoint such officers and servants of the new corporation as may be thought necessary.

The returning officer appointed to hold the first election, in the case of a new corporation, is to perform the duties which in other cases are to be performed by the clerk of a local municipality, and is to act as clerk of the new municipality until a clerk is appointed and has taken the oath of office: s. 31 (2).

Officials and Sureties.

Effect of separation upon public officers and their sureties.

43.—(1) The separation of a junior township from a union of townships shall not affect the office, duty, power or responsibility of any officer of the union who continues to be an officer of the remaining township or townships after such separation, or of the sureties of such officer or their liability, further than by limiting such office, duty, power, responsibility, suretyship and liability to the remaining township or townships.

Further provisions as to officers.

(2) Every such officer shall, after the separation, be the officer of the remaining township or townships as if he had been originally appointed an officer thereof.

Liability of sureties for public officers.

(3) The sureties for such officer shall remain liable, as if they had become his sureties in respect only of the remaining township or townships, and all securities shall, after the separation, be read as if they had been given only to or for the benefit of the remaining township or townships. 3-4 Geo. V. c. 43, s. 43.

As to the necessity for this section, see Thompson v. M'Lean (1859), 17 U.C.R. 495, in which case it was held that the sureties for a sheriff as sheriff of the United Counties of Middlesex and Elgin were not liable for him as sheriff of Middlesex, after the union had been dissolved.

New Division into Wards.

Division into wards.

44. Where the council of a city or town before the 15th day of July in any year, by a vote of two-thirds of all the members, passes a resolution affirming the expediency of a division or a new division into wards of the city or town or of a part of it, the Municipal Board may divide or re-divide the city or town or part of it into wards as it may deem expedient, provided that no ward shall have a population of less than five hundred, and that there shall be at least three wards in any such city or town. 5 Geo. V. c. 34, s. 10.

This power was formerly exercised by the Lieutenant-Governor in Council.

PART II.

MUNICIPAL COUNCILS—HOW COMPOSED.

It was held in Pare v. Shefford (1902) Q.R. 24, S.C. 50, that a pro mayor of a local municipality has no right to sit in the county council.

The new municipal code now provides (art. 88) that if the mayor of a local municipality is absent or unable to act the pro mayor appointed under art. 87 may represent the local municipality at all meetings of the county council.

The provision of the Manitoba Municipal Act, Rev. Stats. 1913, c. 133, s. 51 (3, 4) that lots shall be drawn on or before 31st January to determine which councillor shall sit for two years and which for one year is directory and a drawing of lots on 10th March is a sufficient compliance with the Act.

Breckman v. Coldwell (1914), 24 Man. L.R. 1, 15 D.L.R. 504, 26 W.L.R. 728, 5 W.W.R. 1176.

Counties.

County councils, how composed.

45. The council of a county shall be composed of the reeves and deputy reeves of the towns, not being separated towns, and of the villages and townships in the county. 3-4 Geo. V. c. 43, s. 45.

As to the number of deputy reeves to which towns, villages and townships are entitled, see s. 51.

Cities.

Councils of cities, how composed.

46.—(1) Subject to subsection 7 the council of a city shall be composed of a mayor, the members of the Board of Control, if the city has such a board, and

(*a*) Three aldermen for each ward, or

(*b*) Where the council by by-law so provides two aldermen for each ward;

(*c*) In the case of a city having a population of not more than 15,000, where the council by by-law so provides, one alderman for every 1,000 of the population.

(2) In the case provided for by clause (*c*) of subsection 1, or where the council of a city having a population of more than 15,000 by by-law so provides, the aldermen shall be elected by general vote, and in the latter case the number of aldermen shall be the same as if they were elected by wards.

By-law for election by general vote.

(3) A by-law for the purposes mentioned in clause (*b*) or (*c*) of subsection 1 shall not be repealed until at least two annual elections have been held under it, and a by-law under subsection 2 shall not be repealed until at least five annual elections have been held under it.

Repeal of by-law.

(4) A by-law for any of the purposes mentioned in subsections 1 and 2 and a by-law repealing any such by-law shall be passed not later in the year than the first day of November and shall not be passed unless it has received the assent of the municipal electors.

When and how by-law to be passed.

As to by-laws requiring the assent of the municipal electors, see Part X.

(5) Every such by-law including a repealing by-law shall take effect at and for the purposes of the annual election next after the passing of it.

When by-law to take effect.

(6) Subject to subsection 3 where the petition of at least one-fifth of the municipal electors is presented on or before the first day of November in any year, praying for the passing of a by-law repealing a by-law for the purpose mentioned in clause (*c*) of subsection 1, or where a petition of not less than 400 electors is presented praying for the passing of a by-law for the purpose mentioned in subsection 2, or for the repeal of a by-law passed under that subsection, the council shall submit the question of making the proposed change to a vote of the municipal electors at the next ensuing annual election and if the voting is in favour of the change shall without delay pass a by-law in accordance with the prayer of the petition. 3-4 Geo. V. c. 43, s. 46 (1-6).

Submission of by-law on petition of electors.

Council of City of Toronto.

(7) Notwithstanding anything in any special Act the council of the City of Toronto shall consist of the mayor and four controllers to be elected by general vote, and three aldermen for each of the Wards, Numbers 1 to 6 inclusive, and two aldermen for Ward Number 7 until its population, according to the municipal enumeration by the assessor, reaches 30,000, and after that three aldermen for that Ward. In the event of a new division into wards of the said city under the provisions of this Act, this subsection shall become inoperative. 3-4 Geo. V. c. 43, s. 46 (7); 6 Geo. V. c. 39, s. 2.

"Population" is to be determined by the latest census of Canada: s. 49.

As to the mode of determining the sufficiency of the petition and as to the right of a petitioner to withdraw, see notes to s. 23.

"Notwithstanding anything in any special Act."—As to the necessity for these words, see s. 7 and notes to it.

Towns.

Councils of towns in unorganized territory.

47.—(1) The council of a town in unorganized territory shall be composed of a mayor and six councillors to be elected by general vote.

Councils of towns over 5,000.

(2) If the town has a population of not less than 5,000 the council may provide that the council shall be composed of a mayor and nine councillors to be elected by general vote. 3-4 Geo. V. c. 43, s. 47.

"Population" is to be determined by the latest census of Canada: s. 49.

A by-law passed under this subsection must be passed not later than 1st November, and cannot be passed without the assent of the electors s. 48 (5), and so also as to a repealing by-law.

Councils of towns in counties.

48.—(1) The council of a town not in unorganized territory having a population of more than 5,000 shall be composed of a mayor, a reeve, as many deputy reeves as the town is entitled to and three councillors for each ward where there are less than five wards, or two councillors for each ward where there are five or more wards.

By-laws for changing composition of council.

(2) Where there are less than five wards the council on the petition of not less than 100 municipal electors shall provide that the number of councillors shall be two for each ward, or may without petition provide that the number of councillors shall be one for every 1,000 of the population to be elected by general vote, or if the population is less than 6,000 that the number of councillors shall be six to be elected by general vote.

Case of town of not more than 5,000.

(3) Where the town has a population of not more than 5,000 the council shall be composed of a mayor, a reeve, as many deputy reeves as the town is entitled to and

(*a*) Six councillors to be elected by general vote; or

(*b*) Where the council so provides one councillor for each ward and the remaining councillors to complete the full number of six to be elected by general vote.

Repeal of by-laws.

(4) A by-law for any of the purposes mentioned in subsection 2 of section 47 or subsection 2 or clause (*b*) of subsection 3 of this section shall not be repealed until two annual elections have been held under it, and a by-law for the purpose mentioned in clause (*b*) of subsection 3 shall not be passed until two annual elections under clause (*a*) have been held.

Assent of electors required.

(5) A by-law for any of the purposes mentioned in subsection 2 of section 47 or in subsections 2 and 3 of this section, and a by-law repealing any such by-law shall be passed not later in the year than the first day of November and shall not be passed unless it has received the assent of the municipal electors.

When by-law to take effect.

(6) Every such by-law, including a repealing by-law, shall take effect at and for the purposes of the annual election next after the passing of it.

Submission of questions on petition of electors.

(7) Subject to subsections 2 and 4, where a petition of not less than one-fifth of the municipal electors is presented on or before the first day of November in any year praying for the passing of a by-law for any of the purposes mentioned in this section

or for repealing any such by-law, except a by-law reducing the number of councillors to two for each ward, the council shall submit the question of making the proposed change to a vote of the municipal electors at the next ensuing annual election and if the voting is in favour of the proposed change shall without delay pass a by-law in accordance with the prayer of the petition.

ubmission of question of repeal.

(8) Subject to subsection 4, where a by-law has been passed for reducing the number of councillors to two for each ward, the council, upon the petition of not less than 100 resident municipal electors, presented not later in the year than the first day of November shall submit the question of repealing the by-law to a vote of the electors at the next ensuing annual election and if the voting is in favour of the repeal shall without delay pass a by-law in accordance with the prayer of the petition. 3-4 Geo. V. c. 43, s. 48.

"Population" is to be determined by the latest census of Canada: s. 49.

As to the mode of determining sufficiency of petition and as to the right of a petitioner to withdraw, see notes to s. 23.

As to number of deputy reeves, see s. 51.

As to by-laws requiring the assent of the electors, see Part X.

opulation, ow determined.

49. For the purposes of sections 46 to 48 the population shall be determined by the latest census of Canada. 3-4 Geo. V. c. 43, s. 49.

Villages and Townships.

ouncils of villages and ownships.

50.—(1) The council of a village and the council of a township shall consist of a reeve, as many deputy reeves as the municipality is entitled to, and a sufficient number of councillors to make up with the deputy reeves four in all, and they shall all be elected by general vote.

(2) The council of a township in unorganized territory shall consist of a reeve and four councillors. 3-4 Geo. V. c. 43, s. 50.

As to number of deputy reeves, see s. 51.

Towns, Villages and Townships.

Deputy reeves in towns, villages, and townships.

51.—(1) A town, not being a separated town, and a village and a township in a county shall each be entitled where it has more than 1,000 and not more than 2,000 municipal electors to a first deputy reeve, or where it has more than 2,000 and not more than 3,000 municipal electors, to a first deputy reeve and a second deputy reeve, and where it has more than 3,000 municipal electors to a first deputy reeve, a second deputy reeve and a third deputy reeve.

Number of electors, how determined.

(2) The number of municipal electors shall be determined by the last revised voters' list but in counting the names, the name of the same person shall not be counted more than once. 3-4 Geo. V. c. 43, s. 51.

The right of a local municipality to a deputy reeve may be contested under Part IV: see s. 161 (1).

It has been held that there is no right to a scrutiny beyond that of seeing that the name of any elector is not counted more than once, and that **"determined,"** in this subsection, must mean in the first instance at least by the council (*i.e.*, of the local municipality), and that the onus of shewing error is on the attacking party: Rex ex rel. Sullivan v. Church (1914), 6 O.W.N. 365, reversing the decision of the Master in Chambers reported in the same volume at page 116.

In that case the proceeding was to set aside the election of the respondent as deputy reeve. In Rex ex rel. Sharpe v. Beck (1909), 13 O.W.R. 457, it was held by the Master in Chambers that the question of the right of a municipality to a deputy reeve could not be raised on a proceeding to set aside the election of a person who had been elected deputy reeve. This decision was before express power to proceed under s. 161 (1) was given.

QUALIFICATION.

Qualification of members of councils.

52.—(1) Subject to subsection 6, no person shall be qualified to be elected a member of the council of a local municipality unless he

(*a*) Resides in or within two miles of the municipality where it is situate in a county and in or within five miles of the municipality where it is situate in unorganized territory; (3-4 Geo. V. c. 43, s. 52 (1), *part*;) 5 Geo. V. c. 34, s. 11.

(*b*) Is a British subject;

A municipal councillor who was an alien at the time of his election and at the date of issue of a writ of *quo warranto* demanding that his seat be vacated on that ground cannot by becoming naturalized pending the proceedings obtain the dismissal of the writ: Campeau v. Grosboillot (1899), Q.R. 17, S.C. 116.

(*c*) Is a male of the full age of twenty-one years;

(*d*) Is not disqualified under this or any other Act, and

(*e*) In any municipality is at the time of the election in actual occupation of a freehold estate rated in his own name or in the name of his wife on the last revised assessment roll of the municipality for at least $2,000, whether or not the same is encumbered, and of which he or she is the owner; or

(*f*) Is or his wife is at the time of the election the owner or tenant of a freehold or leasehold or partly freehold and partly leasehold estate, legal or equitable, or partly legal and partly equitable, in land assessed in his or her name on the last revised assessment roll of the municipality, if not in unorganized territory, of at least the value according to such assessment roll over and above, in the case of an owner, all liens, charges and encumbrances thereon, of

i. In a village, if freehold, $200; or if leasehold, $400;

ii. In a township, if freehold, $400; or if leasehold, $800;

iii. In a town, if freehold, $600; or if leasehold, $1,200;

iv. In a city, if freehold, $1,000; or if leasehold, $2,000;

Or if in unorganized territory,

v. In a township (except at the first election), if freehold, $100; or if leasehold, $200;

vi. In a city or town, if freehold, $400; and if leasehold, $800. 3-4 Geo. V. c. 43, s. 52 (1), *part*.

"Resides."—See notes to s. 13 (1).

As to distance and how measured, see notes to s. 13 (1).

If the view adopted by Middleton, J., in In re Fitzmartin (supra, s. 13) is correct, a person, though his dwelling-house were situate five miles away from the municipality within two miles of which he must reside, would be qualified to be elected. Such a case might well occur: his farm might at the nearest point be distant no more than two miles from the municipality, and yet his dwelling-house might be situate at the other extremity of the farm, and if the farm were large enough, the dwelling-house might be five miles distant from the municipality, and yet, according to the decision, as he must be held to reside upon every part of his farm, it follows that he resides within two miles of the municipality.

In an action to annul the election of an alderman for want of the required property qualification, the fact that his name appears on the valuation and assessment roll as "proprietor" of the property on which he qualifies is not conclusive and does not preclude investigation of the nature of his title, notwithstanding the final clause of 62 Vict. c. 58, s. 29, which says, "the qualification required by this article to be established by the valuation and assessment roll in force at the time of the nomination."

Where it appears that the alderman is the donee of immovable property on which he qualifies, and that by the terms of the deed of donation he has the mere naked ownership, the *usufruct* for life being reserved by the donor, he is not "seized of" and does not "possess as proprietor" within the meaning of 62 Vict. c. 58, s. 29: Archambault v. Tansey (1902), Q.R. 23 S.C. 170.

The valuation on the roll of municipal values is not conclusive to establish the value of an immovable on which a municipal councillor claims to qualify. In determining for this purpose the value of the immovable over and above all charges and hypothecs, it is necessary to deduct:

(1) The amount remaining due on taxes for drains payable by annual instalments during a term of years;

(2) The additional hypothecs stipulated for by a grantor in an agreement for a loan, but not a hypothec agreed to for a guarantee of compound interest which is not due and to guarantee the repayment of insurance premiums if they have not been paid: Chalifoux v. Goyer (1898), Q.R. 14 S.C. 170.

In an Act fixing the qualification for municipal office by ownership of "real estate of the value of six hundred dollars ($600)," the words "the qualification shall be established by the valuation roll" relate only to the value of the property which confers the qualification, and one who is owner of real estate which appears on the roll at the value prescribed is eligible, though his name is not given as the owner: Desjardins v. Leclerc (1910), Q.R. 37 S.C. 368.

A person to be qualified for alderman of the city of Victoria must be the owner, in his own right, of property of the clear and unencumbered value of at least five hundred dollars ($500) during the whole period of the six months preceding nomination: Falconer v. Langley (1899), 6 B.C.R. 444.

Where a qualification in respect of property rated in his own name on the last revised assessment roll to at least five hundred dollars ($500) over and above all charges, liens and encumbrances affecting it is required for the office of mayor, a person who lives with his wife upon property owned by her and assessed in her name at six hundred dollars ($600) and in his name as occupant or tenant and not otherwise and the property is encumbered to the extent of five hundred and fifty dollars ($550), the person has not the necessary property qualification: In re Morden Election, Ruddell v. Garrett (1899), 12 Man. L.R. 563.

The value of property for the purpose of the qualification of a candidate for office of municipal councillor under s. 52 of The Manitoba Municipal Act was held by a divided Court to mean the actual and not the assessed value at the time of the election: Spencer v. Farthing (1915), 25 Man. L.R. 564, 23 D.L.R. 620, 31 W.L.R. 944, 8 W.W.R. 1186.

A poll tax payer is not a ratepayer within the meaning of the Assessment Act, R.S.N.S. 1900, c. 73, and is not qualified to be elected or to serve as a councillor under The Towns Incorporation Act, R.S.N.S. 1900, c. 71, s. 26 (3), and it is not sufficient that he has paid rates on property occupied by him which is erroneously assessed in the name of another: In re Mack (1906), 39 N.S. 394, 1 E.L.R. 222.

Where the qualifications for election as a municipal councillor are that he has been a ratepayer for one year before his election and that he continues to be a ratepayer, and it is shewn that a candidate was not a ratepayer at the time of the election, it will be presumed that that condition continued: Rex v. Mack (1907), 41 N.S. 128, 2 E.L.R. 263.

No distinction can be made between a disqualification existing at the time of the nomination and one existing at the time of the election: Ib.

"Full age of 21 years."—See notes to s. 13 (1).

"Is not disqualified under this or any other Act," *e.g.*, under the Ontario Election Act, R.S.O. c. 8, ss. 182, 183, or under ss. 53, 302 (5, 8), 319 (3) of this Act.

"Freehold."—See notes to s. 13 (1).

"Actual occupation."—It has been decided that "actual occupation" means no more than possession: residence is not essential, and it is sufficient if the person has control of the freehold and "no one else is in occupation or can assert any right thereto": Rex ex rel. Sharpe v. Beck (1909), 13 O.W.R. 457, affirmed Ib. 539.

Where partners are in occupation of partnership property, each is to be deemed in actual occupation of his interest in the property: Reg. ex rel. Harding v. Bennett (1896), 27 O. R. 314; Reg. ex rel. Joanisse v. Mason (1897), 28 O.R. 495.

A candidate who is the owner of an undivided one-half of a parcel of land, the total value of which is $10,000 and which is unencumbered, is qualified for the office of mayor under a provision requiring real estate of the value of $1,000 or more over and above encumbrances: Demers v. Hebert, (1912) Q.R. 42 S.C. 314, 8 D.L.R. 632.

Where, after his election, the candidate encumbered the land to such an extent as to bring its value over and above the encumbrance to less than $1,000, his right to the office cannot be attacked in a proceeding to set aside the election; the proper proceeding is that prescribed by article 109 of The Cities and Towns Act: Ib.

"Encumbrances."—A mortgage by a landlord on land leased to a tenant is not an encumbrance on the leasehold interest of the tenant within the meaning of this section: Reg. ex rel. Ferris v. Speck (1897), 28 O.R. 486. The mortgage in that case covered land other than the leased property, and it was held that if the result of the transaction was that the leasehold interest was encumbered, the lessee was entitled to have the securities marshalled so that recourse should be first had to the other land included in the mortgage and so as to protect the leasehold interest, but that if that were not the case the mortgage debt should be apportioned according to the respective values of the two properties included in it. The principle of that case was followed by Street, J., in Reg. ex rel. Burnham v. Hagerman (1900), 31 O.R. 636, 638.

A mortgagee can qualify on his legal estate: Rex ex rel. Morton v. Roberts (1912), 26 O.L.R. 263, 278, 4 D.L.R. 278, 22 O.W.R. 50.

A person seeking election as a municipal councillor must be an elector of the municipality, otherwise his election may be contested on that ground, but he is not required to maintain this qualification during the whole time of his membership in the council if he possesses the other required conditions of eligibility: Allard v. Charlebois (1898), Q.R. 14, S.C. 310.

A person who resides in a municipality, but for five months boards with his wife in an apartment in another municipality, for the purpose of educating his children, all the time keeping his house in the other municipality, going there at times and returning to live in it after the expiration of the five months, does not change his ordinary residence there, and continues eligible in this respect for the position of alderman of that municipality: Latour v. Lefebvre (1914), Q.R. 47, S.C. 261.

When alienation of assessed estate not to disqualify.

(2) A person who would have had the qualification prescribed by subsection 1, if he or his wife had continued to be the owner or tenant of land in respect of which his or her name was entered on the last revised assessment roll down to and at the time of the election, if otherwise qualified, shall be qualified to be elected, notwithstanding that he or his wife has alienated the estate in

the land for which he or she was assessed, or, if a leasehold estate, it has been determined by effluxion of time, surrender or otherwise between the date of the return of the assessment roll and the time of the election, if at the time of the election he is a resident of the municipality and he or his wife has at the time of the election an estate in other land of a sufficient assessed value, according to the last revised assessment roll, to qualify him for election under subsection 1 if he or she had been assessed for it.

(3) Subsections 4 and 5 of section 56 shall apply to the rating qualifications prescribed by this section.

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(4) Where territory has been annexed to an urban municipality, until an assessment roll for the municipality, including such territory, has been made and revised, it shall be sufficient for the purposes of this section if the assessment is upon the last revised assessment roll of the municipality in which the territory before its annexation, was situate, and for a sufficient amount to qualify him for election to the council of that municipality.

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(5) In this section "leasehold" and "leasehold estate" shall mean a tenancy for one year or more, or a tenancy from year to year.

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(6) Where the inhabitants of a township or locality in unorganized territory have become incorporated as a township or a union of townships, the only qualification necessary at the first election shall be that the person is a male of the full age of twenty-one years, a British subject and a householder resident in the municipality.

See also ss. 24 (3), 27 (2).

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(7) If there are not at least two persons qualified to be elected for each seat in the council, no qualification beyond that of a municipal elector shall be necessary. 3-4 Geo. V. c. 43, s. 52 (2-7).

"Municipal Elector."—For qualification of, see ss. 57 to 62.

DISQUALIFICATION.

Persons disqualified from being members of a Council.

53.—(1) The following shall not be eligible to be elected a member of a Council or be entitled to sit or vote therein:

"Eligible to be elected."—Disqualification has relation to the time of the election, and not to the time of acceptance of office. The day appointed for the nomination is the day of election, and disqualification has relation to that day.

Reg. ex rel. Rollo v. Beard (1865), 3 P.R. 357; Reg. ex rel. Adamson v. Boyd (1868), 4 P.R. 204; Rex ex rel. Zimmerman v. Steele (1903), 5 O.L.R. 565; Rex ex rel. O'Donnell v. Broomfield (1903), 5 O.L.R. 596; Rex ex rel. Robinson v. McCarty (1903), 5 O.L.R. 638; Rex ex rel. Jamieson v. Cook (1905), 9 O.L.R. 466; Kennedy v. Dickson (1915), 7 O.W.N. 769; Rex ex rel. Mitchell v. McKenzie (1915), 33 O.L.R. 196, 21 D.L.R. 438.

"Member of a Council" includes the head of a Council and a member of a Board of Control: s. 2 (h).

A person, though ineligible to office by reason of a legal disqualification, may, nevertheless, be a candidate at an election to the office, and as such is liable to the penalties and forfeitures imposed on candidates who are guilty of bribery: Masson v. Hebert (1904), Q.R. 27 S.C. 435.

A municipal councillor who does not possess the prescribed qualification for the office cannot act whether or not he had the qualification at the time of his election, and, if he acts without having the prescribed qualification, he may be proceeded against by *quo warranto:* Sigouin v. Viau (1899), Q.R. 16 S.C. 143.

(*a*) A Judge of any Court;

(*b*) A gaoler or a keeper of a lock-up;

(*c*) A sheriff, deputy sheriff or sheriff's bailiff;

(*d*) A high bailiff or chief constable of a city or town;

(*e*) An assessment commissioner, assessor, a collector of taxes, a treasurer, a clerk, or any other officer, employee or servant of the corporation of a municipality;

The persons mentioned in this clause are disqualified for election "in any municipality." It was so held in Reg ex rel. Boyes v. Detlor (1868), 4 P.R. 195. In that case the words were "of any municipality." It is submitted that the words **"of a municipality"** in this clause have the same meaning.

In Regina ex rel. Richmond v. Tegart (1861), 7 U.C.L.J.O.S. 128, it was held that a person who by by-law had been appointed an overseer of highways, and had accepted the office, was an officer of the municipality, and as such was not qualified to be elected a councillor.

Since this decision the Act has been amended, and overseers of highways are not disqualified: see subs 2 cl. (e).

In Forsyth v. Canniff (1890), 20 O.R. 478, it was held that a medical health officer appointed under R.S.O. 1887, c. 205, s. 47, was not a servant of the corporation so as to make the corporation liable for his acts done in the performance of his statutory duties, and there are other cases to the same effect. He would, however, be disqualified under this clause.

Apart from legislation there are offices which cannot be held by the same person at the same time because the duties are incompatible. Reg ex rel. Boyes v. Detlor (supra) (office of clerk of a county council and that of mayor of any municipality); Reg. v. Owens (1859), 2 E. & E. 86 (mayor who acts as returning officer not eligible as councillor); Reg. ex rel. Doran v. Haggart (1864), 1 C.L.J., N.S. 74 (offices of mayor and reeve of a town); Reg. v. Blizard, L.R. (1866), 2 Q.B. 55 (councillor and mayor of a borough who presided at the election) are instances of such cases.

(*f*) A clerk or bailiff of a Division Court;

(*g*) A Crown attorney or a clerk of the peace;

(*h*) A registrar or a deputy registrar of deeds;

(*i*) A master or a local master of titles;

(*j*) A member of a public or separate school board or of a board of education, of a city, town or village, or a member of a high school board, unless he has at least ten days before the day of nomination filed his resignation with the Secretary of the Board;

It is sufficient in other cases if the disqualification has ceased before nomination.

"At least ten days before."—In computing this time the day of filing and the day of nomination are excluded.

The ordinary rule is that "where a certain number of days are specified, they are to be reckoned exclusive of one of the days and inclusive of the other, unless clear days are expressed." Rex v. Turner, L.R. (1910), 1 K.B. 346, 26 T.L.R. 112.

The expressions, "at least . . . days," or "not less than . . . days," or "after the expiration of . . . days," mean "clear days."

Regina v. The Justices of Shropshire (1838), 8 A. & E. 173; In re Sams and Toronto (1852), 9 U.C.R. 181; In re Railway Sleepers Supply Company, L.R. (1885), 29 Ch.D. 204, 1 T.L.R. 399; Rex v. Turner (supra); Browne v. Black, L.R. (1911), 1 K.B. 975, 27 T.L.R. 314, affirmed L.R. (1912), 1 K.B. 316, 28 T.L.R. 119; Redman v. Buchanan (1913), 7 A.L.R. 35, 11 D.L.R. 389, 4 W.W.R. 85.

Where it is provided by statute that council meetings "may be adjourned from day to day for eight days and no longer," the council can sit only for eight days including Sunday, and the first day of the session: Rex v. Restigouche, ex parte Murchie (1914), 43 N.B. 115.

The provision as to filing resignation was first enacted by 10 Edw. VII. c. 85, s. 2.

The effect of the filing of the resignation is to vacate the seat: see subs. 4.

In Rex ex rel. Gardhouse v. Irwin (1913), 4 O.W.N. 1097, 10 D.L.R. 844, 24 O.W.R. 466, it was held that a high school trustee was not disqualified from being elected a Commissioner of Water and Light. The ground of the decision was that under The Municipal Water Works Act, which was to be read and construed as part of The Municipal Act, the disqualification arising from being a high school trustee was applicable only to councillors.

This case is no longer law because The Public Utilities Act, R.S.O. c. 204, s. 36 (4), provides that those provisions of Parts 2, 3 and 4 of The Municipal Act which are applicable to members of a council shall apply to commissioners elected under the first-mentioned Act, and one of these provisions is s. 53, which disqualifies a member of a High School Board from being elected "a member of a council or sitting or voting therein."

(*k*) A person licensed to sell spirituous liquor by retail;

A person licensed to sell spirituous liquors by retail, appointed under The Canada Temperance Act by the county council, is disqualified from being a member of the council under C.S.N.B. (1903), c. 165, s. 10: Ex parte Williams, In re Dickie (1907), 38 N.B. 156, 3 E.L.R. 378.

In order to disqualify a member of a municipal council because of his illegal sale of intoxicating liquor in contravention of The Liquor License Act of New Brunswick, he must be both charged with and convicted of having committed the offence knowingly, such being an essential to the disqualification, although not in all circumstances necessary to a conviction for the illegal sale: (per White, J.) Ex parte Murchie, Rex v. Gloucester (1914), 24 Can. Cr. Cas. 228 (N.B.).

(*l*) A license commissioner or an inspector of licenses;

(*m*) A police magistrate.

(*n*) A clerk of a county or district Court.

(*o*) A deputy clerk of the Crown or a local registrar;

(*p*) A person having himself or by or with or through another an interest in any contract with the corporation or with any commission or person acting for the corporation or in any contract for the supply of goods or materials to a contractor for work for which the corporation pays or is liable directly or indirectly to pay, or which is subject to the control or supervision of the council or of an officer of the corporation, or who has an unsatisfied claim for such goods or materials;

(*q*) A person who either himself or by or with or through another has any claim, action or proceeding against the corporation;

(*r*) A person who, either himself or by or with or through another is counsel or solicitor in the prosecution of any claim, action or proceeding against the corporation or in opposing or defending any claim, action or proceeding by the corporation;

The object of clauses (p), (q) and (r) is to prevent from being elected or sitting or voting as a member of a council any one whose personal interest might clash with that of the corporation.

The cases are conflicting as to the application of the maxim *de minimis non curat lex* to clause (p).

It has been held in Ontario that it does not apply: Reg. ex rel. Bland v. Figg (1860), 6 U.C.L.J.O.S. 44; Rex ex rel. O'Shea v. Letherby (1908), 16 O.L.R. 581; and it was also so held in Nell v. Longbottom, L.R. (1894), 1 Q.B. 767, 10 T.L.R. 344. The contrary view was expressed by Alderson, B., in Woolley v. Kay (1856), 1 H. & N. 307, 309, and by Bramwell, L.J., in Lewis v. Carr, L.R. (1876), 1 Ex.D. 484, 490; and in Nutton v. Wilson, L.R. (1889), 22 Q.B.D. 744, 749, Lopes, L.J., though he expressed no opinion as to it, said that it might be the maxim would be applicable to very trifling matters, such as the purchase of a paint brush or a few nails.

In the following cases persons were held to be disqualified, under clause (p) or a similar enactment, as having or being interested in a contract with the corporation:—

Reg. ex rel. Davis v. Carruthers (1854), 1 P.R. 114 (a person who had a claim against the corporation for work which had been completed); Reg. ex rel. Bland v. Figg (supra) (an ex-treasurer who had a claim against the corporation for services performed while treasurer); Reg. ex rel. McMullen v. DeLisle (1862), 8 U.C.L.J.O.S. 291 (a person who had been road commissioner, a part of whose remuneration was unpaid); Reg. ex rel. Rollo v. Beard (supra), (a member of a firm which was owed by the corporation for coal and wood supplied to the corporation without any arrangement as to price or terms of payment); Reg. ex rel. Ferris v. Iler (1879), 15 C.L.J. 158 (a person to whom the corporation was indebted for a balance of the commission he was entitled to as road commissioner); Whiteley v. Barley, L.R. (1888), 21 Q.B.D. 154, 4 T.L.R. 585 (an engineer employed by a local authority to superintend drainage works, and who was to be remunerated by the payment of a percentage on the outlay); Reg. ex rel. McGuire v. Birkett (1891), 21 O.R. 162 (a person to whom the corporation was indebted for work done under a contract); Rex v. Rowlands, L.R. (1906) 2 K.B. 292 (a member of a board of guardians who had agreed to collect rent for them, nothing being said as to the payment of any fee or commission, and who had retained out of money he received for the board a sum which he claimed as commission); Rex ex rel. O'Shea v. Letherby (supra) (a member of a citizens' league which had agreed to indemnify the corporation against certain costs); Rex ex rel. Slater v. Homan (1911), 2 O.W.N. 1221, 1334 (a person who supplied goods for the erection of a fire hall to a contractor who had agreed with the corporation to erect it).

Alberta Cases.

Rex ex rel. Livingston v. East (1914), 18 D.L.R. 394, 29 W.L.R. 710 (a contract with the corporation, though it has not benefitted the candidate or even if it be unenforceable); Rex ex rel. Livingston v. McNamara (1914), 18 D.L.R. 392, 29 W.L.R. 707, 7 W.W.R. 324 (a member of an unincorporated club in whose favour a municipal council has passed a resolution granting its request to have an agreement drawn up whereby the club should be allowed to drill for gas and upon gas being found that the corporation would reimburse the members of the club for the amounts which they had expended in the interest of the corporation).

British Columbia Cases.

Coughlan v. Victoria (1893), 3 B.C.R. 57 (a person who has contracted to supply to another person, who has a contract with the corporation, materials to carry it on).

NOVA SCOTIA CASES.

Rex ex rel. McDonald v. Robertson (1902), 35 N.S. 348 (an inspector appointed to enforce the Canada Temperance Act by prosecuting offences against it to whom a small sum was due for these services).

QUEBEC CASES.

Stephens v. Hurteau (1890), 6 Montreal L.R. 148 (an alderman who undertook to supply the materials required by a contractor for the execution of a contract he had entered into with the corporation; Lapointe v. Messier (1914), 49 S.C.R. 271, 17 D.L.R. 347 (a person who was paid by a contractor with a corporation a bonus for giving financial assistance to the contractor to enable him to carry out his contract).

The disqualification of a municipal councillor under art..205 of the Quebec Municipal Code because of a contract with the municipal corporation from which which he obtains a profit, continues after the completion of the work contracted for and the receipt of the payment therefor (Houle v. Brodeur (1900), Q.R. 18 S.C. 440, and Damon v. Lamy (1913), Q. R. 44 S. C. 489, 19 Rev. de Jur. 523 doubted): Robillard v. Sloan (1913), Q.R. 45 S.C. 496, 22 D.L.R. 538, (1916) Q.R. 49 S.C. 518, 31 D.L.R. 12.

In the following cases persons were held not to be disqualified:—

Rex ex rel. Fitzgerald v. Stapleford (1913), 29 O.L.R. 133, 13 D.L.R. 858. In this case the respondent's son and business partner bought with partnership money on behalf of a number of villagers a lot which was intended to be conveyed to the Crown as a site for the erection of a Government buildingi n lieu of another lot which the Crown was to convey to the corporation of the village.

City of London Electric Lighting Co. v. London Corporation L.R. (1903) A.C. 434, 19 T.L.R. 694, where it was held that a contract between an Electric Lighting Company and the Commissioners of Sewers, which would have been invalid if at its date any of the Commissioners, or of the members of the Court of Aldermen, or of the Common Council, were shareholders in the company, but was not invalid for that reason, was not rendered invalid by the mere fact that it was afterwards transferred with the consent of the Commissioners to another company in which Commissioners, or members of the Court of Aldermen or of the Common Council, were shareholders.

Norton v. Taylor, L.R. (1906), A.C. 378, 22 T.L.R. 450, in which it was held that a person holding a civic office who supplied materials to a person having a contract with the corporation who chose to buy them from him without any sort of arrangement or understanding that he should do so, was not liable to the penalty imposed by an Act which provided that "Any person who, while holding any civic office under this Act, continues to be or becomes directly or indirectly, by means of partnership with any other person, or otherwise however knowingly engaged or interested in any contract, agreement or employment with or on behalf of the council, except as a shareholder, but not being a director in any joint stock company, shall be liable to a penalty not exceeding £100, nor less than £50, and shall be for three years thereafter disqualified from holding any civic office."

Alberta Cases.

Rex ex rel. Smith v. Shick (1907), 5 W.L.R. 533 (a paid official whose duties had been completed before the nomination; Rex ex rel. La Fleche v. Sheppard (1915), 9 A.L.R. 1, 24 D.L.R. 404, 8 W.W.R. 593, 1020 (a debt due for taxes is not such an indebtedness to the corporation as will by force of the Edmonton Charter 1913, c. 23, s. 22 (1), disqualify for election to the office of mayor or alderman).

British Columbia Cases.

Mason v. Meston (1908), 14 B.C.R. 22 (a person against whom the corporation has a judgment).

Quebec Cases.

Benard v. Brisette (1899), Q.R. 16 S.C. 30 (a municipal councillor, authorized by a committee of the council to buy weigh scales for the corporation, who sold to it for a proper price weigh scales which he had had repaired and had offered for sale some time before); Houle v. Brodeur (1900), Q.R. 18 S.C. 440 (where a mayor of a parish, in a case of urgency, supplies to the employees of the corporation building timber, planks and money for repairs to municipal bridges under the direction, control and sole charge of the corporation, and presents his claim, amounting to $19.38, to the council, which approves of it and orders it to be paid at a meeting over which he presided as mayor and received payment without profit to himself and with no previous contract between him and the corporation, his seat in the council is not thereby rendered vacant).

It was also held in the same case that, assuming art. 205 of the Municipal Code to be applicable, it would only result in the mayor's mere incapacity to act, which could have no retroactive effect upon his election, and would cease to exist on payment of the amount before the issue of the writ of *quo warranto* and before any notice had been given under art. 207 or any resolution adopted under art. 208, and that the result, therefore, was that there never had been a vacancy in the office according to the terms of art. 337, and that the mayor was not within any of the cases provided for by art. 205 of the Municipal Code and art. 987 C.P.Q.

Article 4215, R.S.Q., only disqualifies for municipal office those who receive from the corporation remuneration for services rendered under a contract, express or implied, producing between them and it a binding agreement for a certain period, and not professional men who, without being bound in advance by any contract, render the corporation professional services for which they receive only the remuneration fixed by the tariff of fees.

The resolution of a municipal council to the effect that a person should thereafter be the solicitor or notary of the corporation, even if it is communicated to him and remains in force for several years, is only a direction to the corporation's officials to apply to such person when in need of professional services which he can render, and does not amount to a contract which disqualifies him from being elected a member of the council.

The position of creditor of the corporation does not work a disqualification.

The fact that the agent of a candidate has witnessed without attempting to prevent it an act of personation is not an electoral manoeuvre which can affect the election of the candidate: Chausse v. Olivier (1902), Q.R. 21 S.C. 387.

Pinder v. Evans (1902), Q.R. 23 S.C. 229 (a municipal councillor who represented an insurance company, and was paid by commission on the premiums, which insured through him property belonging to the corporation); Gauthier v. MacDonald (1910), Q.R. 38 S.C. 439 (a sale for cash to the corporation of gravel, on the ground that the transaction fell within the exceptions mentioned in paragraph 3 of art. 205 of the Municipal Code); Therrien v. Deschambault (1911), Q.R. 40 S.C. 263 (a contractor with a municipal corporation for the construction of a municipal work who had completed it, but had not been paid in full); Daoust v. Valois (1912), Q.R. 42 S.C. 318 (a gratuitous holder of a municipal office who had resigned it, although his resignation had not been accepted); Damon v. Lamy (1913), Q.R. 44 S.C. 489, 19 Rev. de Jur. 523 (furnishing horses to work on the roads of a canton under the direction of a general superintendent appointed by its council at prices fixed in advance by the council); Jacques v. Gelinas (1913), Q.R. 45 S.C. 3 (an alderman employed by a contractor having a contract of hire of service with a municipal corporation who remained in the employment and assumed the superintendence of the work undertaken by his employer); Arcand v.

Paquet (1913), Q.R. 45 S.C. 289 (a municipal councillor who gives his services to a corporation for a salary is not permanently incapacitated under the Municipal Code from exercising his office, but only during the time of his service or as long as he has an interest in the hiring contract in which he is engaged. When the services are rendered and the salary paid, recourse cannot be had to *quo warranto* proceedings to dispossess him of his office).

The R.S.Q. 1888, art. 4215, which prohibits any person having a contract or interest in a contract with a municipal corporation from being appointed a member of the council of such corporation, does not apply to sales of goods made at different times by a municipal councillor in the course of his trade, to the corporation which he represents.

Foster v. Currie (1915) Q.R. 48 S.C. 103, 21 Rev. de Jur. 497.

A municipal councillor who works as a labourer for the corporation at the making and repairing of roads made under the Good Roads Act 1912, for the price fixed by the council is not disqualified under art. 205 of the Municipal Code.

Schneider v. Petelle (1915) 21 R.L. N.S. 292, 22 Rev. de Jur. 54.

A PERSON WHO HAS A REAL INTEREST IN THE CONTRACT, THOUGH IT IS IN THE NAME OF ANOTHER, IS DISQUALIFIED.

Simpson v. Ready (1844), 12 M. & W. 736; Collins v. Swindle (1857), 6 Grant 282.

These cases were decided upon enactments less wide in their scope than clause (p). The disqualification in such cases as these is clearly imposed by that clause.

IT IS NOT NECESSARY THAT THE CONTRACT SHOULD BE ENFORCEABLE AGAINST THE CORPORATION.

Reg. v. Francis (1852), 21 L.J.Q.B. 304-5, per Lord Campbell, C.J.

"It would be monstrous to hold that the disqualification does not attach because the corporation cannot be compelled to perform the contract."

Reg. ex rel. Moore v. Miller (1854), 11 U.C.R. 465; Reg. ex rel. Fluett v. Gauthier (1869), 5 P.R. 24, 29, per Wilson, J.

"I do not think it necessary that a valid contract should be shewn binding on the corporation to disqualify the contractor from sitting as a councillor of such corporation. If there is no contract binding on the corporation, the danger is the greater of the party improperly using his position to his own advantage, and to the prejudice of the municipality. The policy of the law is that no man shall be a member of a municipality who cannot give a disinterested vote on a matter of dispute that may arise."

Rex ex rel. Livingstone v. McNamara (1914), 18 D.L.R. 392, 394, 29 W.L.R. 707, 7 W.W. R., 324 per Ives, J.

" . . . It would also appear to be well established by judicial decisions that whether the contract by reason of which disqualification is urged be enforceable or not at law is immaterial."

THE DISQUALIFICATION CONTINUES DURING THE EXISTENCE OF THE CONTRACT.

Halsbury's Laws of England, vol. 19, par. 628.

"The disqualification continues so long as the contract exists and the interest in it remains."

When the interest ceases is a question upon which there has been much divergence of opinion. It has been doubted whether the mere existence of a debt for goods supplied constitutes such an interest, and in one modern case it was expressly held that it does not; but it is submitted that such decision is not sound, and that the interest in the contract remains so long as the contract is unfulfilled on either side: Ib. note (c).

The cases referred to in the note are: In re The Gloucester Municipal Election Petition, L.R. (1901), 1 K.B. 683, 17 T.L.R. 325; Cox v. Truscott (1905), 92 L.T. 650, 21 T.L.R. 319, Woolley v. Kay [supra]; and O'Carroll v. Hastings (1905), 2 Ir. R. 590.

CONTRACTS WITH SCHOOL BOARDS.

The trustees of a common school in Sandwich being about to erect a schoolhouse, the respondent offered to supply bricks to be used in the erection of it. They told him that if the town council would agree to pay him for the bricks they would take them. The respondent then proposed to the council that he would take payment for the bricks by setting off the amount against his taxes. This was agreed to by the council, and the respondent furnished the bricks, and it was held that he was disqualified: Reg. ex rel. Fluett v. Gauthier (1869), 5 P.R. 24.

A councillor had done work for the school board. The work had to be done to the satisfaction of the town engineer. The account for it was not passed or paid until after the election. Held, that as a member of the council he was in a position where his duty might conflict with his interest, and was therefore disqualified: Rex ex rel. O'Shea v. Letherby (supra).

In Rex ex rel. Martin v. Jacques (1913), 10 D.L.R. 761, 4 O.W.N. 1112, it was held by Middleton, J., that a person who had a contract with the Public School Board for the erection of a schoolhouse was disqualified for election as a water commissioner as having "a contract with or on behalf of the corporation" within the meaning of clause (p).

It is submitted that the correctness of this decision is open to question, in view of what was decided in In re The Toronto Public School Board and The Corporation of The City of Toronto (1901), 2 O.L.R. 727, (1902) 4 O.L.R. 468. See also Reg. ex rel. Arnott v. Marchant (1853), 2 Chamb. Rep. 189.

SURETIES BY BOND TO OR FOR THE CORPORATION.

That they are disqualified as having contracts with the corporation has been held in numerous cases, of which Reg. ex rel. McLean v. Watson (1864), 1 C.L.J. 71, and Reg. v. Kirk (1892), 24 N.S. 168, are examples. And it has been held that a surety for the corporation in a bond for security for costs of an appeal is disqualified under this clause: Reg. ex rel. Haner v. Roberts (1878), 7 P.R. 315.

AN UNSATISFIED JUDGMENT IS A CONTRACT WITHIN CLAUSE (p).

In Re Kerr v. Smith (1874), 24 O.R. 473, 475; Rex ex rel. Macnamara v. Heffernan (1904), 7 O.L.R. 289.

A contrary view was, however, expressed by Hunter, C.J., in Mason v. Meston (1908), 14 B.C.R. 22.

In several of the cases that have been referred to there would have been no question as to the person whose right was attacked being disqualified if what is now clause (q) had been then in force.

WHERE THE CONTRACT HAS BEEN COMPLETELY PERFORMED ALTHOUGH THERE HAS BEEN NO FORMAL RELEASE, THERE IS NO DISQUALIFICATION.

Reg. ex rel. Armor v. Coste (1862), 8 U.C.L.J.O.S. 290: Reg. ex rel. Hill v. Betts (1867), 4 P.R. 113; Reg. ex rel. Ford v. McRae (1870), 5 P.R. 309. But see Reg. v. Francis (1852), 21 L.J.Q.B. 304.

WHERE THERE HAS BEEN A BONA FIDE AND COMPLETE ASSIGNMENT OF THE CLAIM AGAINST THE CORPORATION THERE IS NO DISQUALIFICATION.

Reg. ex rel. Mack v. Manning (1867), 4 P.R. 73; but an assignment will not avail if it leaves any interest in the candidate: Reg. ex rel. Ross v. Rastal (1866), 2 C.L.J. 160. Nor will a notification by the candidate of his withdrawal from the contract unless the corporation has assented to the withdrawal: Reg. ex rel. McGuire v. Birkett (supra).

CLAUSE (r).

In Reg. ex rel. Coleman v. O'Hare (1855), 2 P.R. 18, the respondent who at the time of his election as councillor was employed by the town council as attorney and solicitor in defending suits then pending was held to be disqualified.

In Burnham v. Peterborough (1862), 12 U.C.C.P. 103, the plaintiff, who was a member of the council of Peterborough, and employed by the corporation as solicitor, sued for services rendered by him in that capacity, and it was held that the case came within s. 217 of the Municipal Act then in force (Con. Stat. U.C. c. 54), and that the plaintiff, being a trustee for the corporation, could not recover for his services.

There was no provision in the law like clause (r) when these two cases were decided; the ground of the decision in each of them was that the employment created a contractual relation between the employing corporation and the employed, which in the one case disqualified him from being a member of the council, and in the other disentitled him to recover for services rendered while he was a member.

(*s*) A person who at the time of the election is liable for any arrears of taxes to the corporation of the municipality;

(*t*) A person against the land in respect of which he qualifies there are at the time of the election any arrears of taxes.

CLAUSES (s) and (t).

Reg. ex rel. Adamson v. Boyd (supra); Rex. ex rel. Mitchell v. McKenzie (supra); Kennedy v. Dickson (supra). But see Rex ex rel. Band v. McVeity (1914), 6 O.W.N. 369, 16 D.L.R. 874.

In that case the respondent had left with the municipal treasurer by agreement what was considered sufficient to meet all the arrears, but which afterwards turned out to be insufficient, and no demand had been made on him for the balance due previous to his election, and it was held that he was not disqualified.

A candidate is disqualified if liable for arrears of taxes on nomination day although they are paid before polling day: Rex ex rel. Mitchell v. McKenzie (supra).

By s. 73 of The Municipal Act of 1866 (29-30 Vict. c. 51), which was in force when Rex ex rel. Adamson v. Boyd (supra) was decided, it was provided among other things that "no person not having paid all taxes due by him shall be qualified to be a member of the council of any municipal corporation." This provision was dropped when the Act was consolidated in 1873, and was not reenacted until 3-4 Geo. V. c. 43, s. 53 (1) (s).

To be elected a member of a municipal council it is necessary that the candidate at the time of his election, whether or not a poll was held, shall have paid all municipal and school taxes, etc., assessed against him: Rokingham v. Leith (1903), 6 Que. P.R. 77; Latour v. Lefebvre (1909), 10 Que. P.R. 336.

To invalidate a municipal election because an alderman owes municipal taxes at the time of his election, it is necessary that these taxes be due by him personally.

Barrette v. Gareau (1915) Q.R. 49 S.C. 173.

The disqualification for non-payment of taxes extends only to taxes payable to the school commission and to such as are payable by ratepayers whose names are entered upon the collector's rolls, and does not extend to taxes which a purchaser has agreed with his vendor to pay: Gamache v. Blais (1916), Q.R. 50 S.C. 200.

Where a statute requires as an essential qualification for the position of municipal councillor that the candidate shall have paid all taxes due to the corporation, payment of the taxes to the municipal treasurer in due time, although it was by statute provided that the taxes were to be paid to the collector of the municipality, is a good payment, and is a compliance with the statute and the person paying them is duly qualified: Cawley v. Branchflower (1884), 1 B.C.R. Pt. II. 35.

It would appear that taxes are in arrear if unpaid at the expiration of 14 days after demand or notice pursuant to section 104, 106 or 108 of The Assessment Act, R.S.O. c. 195, for by section 109 they may be levied by distress after that time.

See as to this s. 300 and Chamberlain v. Turner (1881) 31 U.C.C.P. 400, referred to in notes to that section.

Shareholders in incorporated companies having dealings with corporation, lessees of corporation, and newspaper proprietors not disqualified.

(2) Subsection 1 shall not apply to a person by reason only:

(*a*) Of his being a shareholder in an incorporated company having dealings or a contract with the corporation, or

Formerly the law was otherwise.

Reg. ex rel. Ranton v. Counter (1855), 1 U.C.L.J.O.S. 68; Reg. ex rel. Padwell v. Stewart et al. (1855), 2 P.R. 18.

(*b*) Of his being a lessee of the corporation for a term of twenty-one years or upwards of any property of the corporation, or—

Until the passing of The Municipal Act of 1866 (29-30 Vict. c. 51, s. 73), a lessee of the corporation, whatever the term of the lease was, was disqualified: Reg. ex rel. Stock v. Davis (1857), 3 U.C. L.J.O.S. 128.

It would seem that the exception applies, however short may be the unexpired term, if the lease is for a term of twenty-one years or upwards.

Land of a corporation was leased for a term of 21 years to a trustee for the respondent. The trustee was desirous of relieving himself of the trusteeship by assigning the lease to the respondent, but died before doing so. The respondent applied for and obtained from the corporation a lease for 17 years, the then unexpired time of the 21 years. The lease for 17 years was intended to be a confirmation of the lease for 21 years. It was held that the respondent was in reality a lessee for a term of 21 years: Reg. ex rel. Mack v. Manning (1867), 4 P.R. 73.

A municipal corporation by by-law granted to the respondent the right to build a dam and bridge across a river in consideration of which he agreed to keep it in repair for 40 years at his own expense. The dam and bridge were built and duly kept in repair by the respondent. Held, that although he was interested in a contract with the corporation, he was not disqualified to be a member of the council, because the contract amounted to a lease from the corporation for a term of upwards of 21 years: Reg. ex rel. Patterson v. Clarke (1871), 5 P.R. 337.

It will be observed that this clause applies only to a lessee of the corporation. Where the lease is to the corporation, so long as the reversion remains in him, the lessor is disqualified as having a contract with the corporation: Reg. ex rel. Ross v. Bastill (1866), 2 C.L.J. 160.

(*c*) That part of his property is exempt wholly or in part from taxation whether such exemption is founded on an agreement with the corporation or on a by-law of the council, or,

Before the enactment of 3 Edw. VII. c. 18, s. 17, it had been held that if the exemption was founded on a contract the exception did not apply: Reg. ex rel. Lee v. Gilmour (1881), 8 P.R. 514. See also Reg. ex rel. Harding v. Bennett (1896), 27 O.R. 314, in which it was held that as the exemption was not founded on a contract the respondent was not disqualified. The enactment referred to was passed in order to put exemptions founded on contract on the same footing as those not so founded.

(*d*) Of his being the proprietor of or otherwise interested in a newspaper or other periodical publication in which official advertisements or notices which appear in other newspapers or periodical publications are published by the council or for which the council is a subscriber or which is furnished to any department or officer of a corporation if the same are paid for at the usual rates, and he has not agreed with the corporation to do the whole or the principal part of its printing.

(*e*) Of his having been appointed and paid for his services as commissioner, superintendent or overseer of any highway or of any work undertaken wholly or in part at the expense of the corporation.

See s. 398, pars. 29 and 30, which provide for the remuneration of these officers.

(*f*) Of his being a consumer or taker of anything supplied by the corporation or any commission under *The Public Utilities Act* or of his having entered into a contract with the corporation or commission for the supply of it to him.

Rev. Stat. c. 204.

Shareholder, lessee or newspaper proprietor, etc., not to vote on any question affecting his dealings with corporation.

(3) A person being such a shareholder shall not vote on any question affecting the company or being such a lessee shall not vote on any question affecting his lease or his rights or liabilities thereunder, or being so exempt from taxation shall not vote on any question affecting the property so exempt, or being such a proprietor of or otherwise interested in a newspaper or other periodical publication shall not vote on any question affecting his dealings with the corporation.

THIS SUB-SECTION APPLIES TO A BONUS BY-LAW, ALTHOUGH THE BY-LAW HAS RECEIVED THE ASSENT OF THE ELECTORS.

In Re Baird and Almonte (1877), 41 U.C.R. 415. In that case a by-law to grant a bonus to a manufacturing company was proposed by a council consisting of five members, of whom four were shareholders in the company. The by-law provided for raising that sum on debentures. The assent of the electors to the by-law was obtained, and thereafter the by-law was finally passed. It was held by Hagarty, C.J., and affirmed by the full Court, that the by-law must be quashed; that under s. 75 of The Municipal Act, 36 Vict. c. 48, a councillor cannot vote on any question affecting a company of which he is a shareholder, even though at the time of election he was not disqualified under that section, and that there was therefore no competent quorum to submit or to pass the by-law.

OTHER CASES.

In In re Vashon and East Hawkesbury (1879), 30 U.C.C.P. 194, on an application to quash a by-law closing up a road, it was shewn that the only persons interested in the maintenance or closing of the road were the applicant and one Cardinal. The township council consisted of five members, of whom Cardinal was one, the concurrent votes of three of whom were necessary to the passage of a by-law. The by-law had received three votes, including Cardinal's, and it was held that the by-law could not be upheld for that Cardinal's interest in its passage, which was apart from that of the public, disentitled him from voting.

In In re L'Abbé and Blind River (1904), 7 O.L.R. 230, a by-law had been passed by the council allowing three tavern liquor licenses to be issued. In reality only two licenses had been issued, one to a tavern owned by the brother of the reeve and the other to a tavern which was held under mortgage by the reeve to secure a sum of money. Another by-law was subsequently introduced into the council to repeal the former by-law and limit the number of licenses to two. This was carried by the casting vote of the reeve; and it was held that the by-law must be quashed, for the reeve, having a personal or pecuniary interest, was disqualified from voting in the council upon the matter.

In New Glasgow v. Brown (1907), 39 S.C.R. 586, reversing (1907), 41 N.S. 542, the corporation had purchased pipe under the authority of a special Act which empowered it to borrow money for the improvement of its water system. Without authority from the council, a committee of the council sold some of the pipe that was not required for laying a new main; and it was held that the illegal sale could not be ratified by a subsequent resolution of the council carried by the votes of the members of the committee, and that an action would lie against the committee by the corporation for any loss incurred through the sale.

In Elliott v. St. Catharines (1908), 18 O.L.R. 57, it was held that a member of a city council is not disqualified from voting upon a proposed by-law to construct a sewer on a street of the municipality merely because he owns property fronting on the street, which gives him a large interest in the proposed drainage. The principle that a member of a council is not disqualified merely because he possesses an interest in common with the other ratepayers applies as well where a local improvement by-law being in question, the community of interest is only with the ratepayers of a section of the municipality as where all the ratepayers will be affected by the proposed by-law.

The three cases last cited have no special application to subs. 3, but are referred to here because they deal with the effect upon the action of a council where it is brought about by the votes of members who were disqualified from voting on the question and it would not have been determined on without their votes.

A member of a council is not disqualified from voting upon the question of the removal of an officer whom the council has the right to remove merely because of a bias on the subject, especially where the bias has been disclosed after the commencement of a lawsuit against him and under the attack of opposing counsel: Gallagher v. Armstrong (1911), 3 A.L.R. 443.

Where commissioners who have authority to deal with the letting of contracts for public works and material for a municipality are appointed by the council, the fact that a member of the council is a shareholder in a company which is largely interested in contracts of that nature does not disqualify him from voting upon a motion for the dismissal of a commissioner: Gallagher v. Armstrong (1911), 3 A.L.R. 443.

A member of a council may not take part in the discussion of any question in which he has a personal interest: Beauregard v. Roxton Falls (1903), Q.R. 24 S.C. 474.

A member of a municipal council who had a personal interest in a subject of its deliberations is incompetent to take part in them, and it is immaterial whether it be an individual interest or an interest as a shareholder in a company. In all such cases the interest exists; it is a direct and present interest and comes within the terms of art. 4301 R.S.Q. 1888.

If the majority by which a by-law is passed is composed of councillors so interested the by-law will be quashed: Victoriaville v. Dubuc (1903), Q.R. 13 K.B. 109.

Page v. Genois (1908), Q.R. 34 S.C. 541 (a person who can neither read nor write is not qualified to be elected or to sit as mayor).

Martineau v. Debien (1911), Q.R. 20 K.B. 512 (not only the usurpation but the abusive exercise of a public charge is the subject of recourse by *quo warranto* for the purpose of dispossessing the person of it).

Resignation when to vacate seat

(4) The filing of the resignation mentioned in clause (*j*) of subsection 1 shall render vacant the seat of the member. 3-4 Geo. V. c. 43, s. 53.

"The Seat of the Member," i.e., of the School Board.

Contracts by members with corporation to be void.

54. If a member of a council in his own name or in that of another and alone or jointly with another enters into a contract with or makes a purchase from or a sale to the corporation, the contract, purchase or sale as against the corporation shall be void. 3-4 Geo. V. c. 43, s. 54.

"Void."—The transaction, though "void" against the corporation, would be binding on the other party. The effect of the section is to make the transaction voidable at the option of the corporation.

The Municipal Clauses Act (B.C.) does not prohibit the making of a contract, and it is, therefore, not void by statute and ought not to be declared void in equity, and therefore a member of a council who makes a contract with the corporation and is paid what he is entitled to receive under it is not liable to an action to compel him to refund what has been paid to him: South Vancouver v. Rae (No. 2) (1906), 12 B.C.R. 184, 4 W.L.R. 98.

EXEMPTIONS.

Persons exempt.

55. The following shall be exempt from being elected as members of a council and from being appointed to any municipal office:

(*a*) Persons of the age of sixty years and upwards;

(*b*) Members and officers of the Senate, or of the House of Commons of Canada, or of the Assembly;

(*c*) Coroners;

(*d*) Clergymen and ministers of every denomination;

(*e*) Members of the Law Society of Upper Canada, whether barristers or students;

(*f*) Officers of Courts of Justice;

(*g*) Physicians and surgeons;

(*h*) Professors, masters and teachers, and the officers and servants of a university, college or school in Ontario;

(*i*) Millers;

(*j*) Officers and members of a fire brigade or of an authorized fire company. 3-4 Geo. V. c. 43, s. 55.

Section 53 contains the disqualifications and this section the exemptions. A person disqualified cannot be elected or hold office, but a person exempt, even though qualified, need not.

A qualified person duly elected who refuses to accept office and to make the declaration of office is liable to a penalty (s. 244).

PART III.

MUNICIPAL ELECTIONS.

Who to be entered on Voters' List.

Qualification to be entered on voters' list. Rev. Stat. c. 6.

56.—(1) Every person shall be entitled to be entered on the voters' list prepared under Part I. or II. of *The Ontario Voters' Lists Act*, who is—

Clause (*a*) being the words "a male, a widow, or an unmarried woman" struck out by 7 Geo. V. c. 43, s 2 (*b*).

(*b*) Of the full age of twenty-one years;

(*c*) A British subject by birth or naturalization;

(*d*) Not disqualified under this Act or otherwise by law prohibited from voting; and

(*e*) Rated, or entitled to be rated to the amount hereinafter mentioned on the last revised assessment roll of the local municipality for land held in his or her own right, or so rated or entitled to be so rated for income, or who is entered or was entitled to be entered on such roll as a farmer's son. 3-4 Geo. V. c. 43 s. 56 (1) ; 7 Geo. V. c. 43, s. 2 (*b*).

The words "or in the case of a male whose wife is or was entitled to be rated" were struck out of clause (*e*) by 7 Geo. V. c. 43, s. 2 (*b*).

Amount of rating necessary.

(2) The rating for land shall be in respect of a freehold or leasehold, legal or equitable or partly of each to an amount not less than

(*a*) In villages and townships, $100;

(*b*) In towns having a population not exceeding 3,000, $200;

(*c*) In towns having a population exceeding 3,000, $300;

(*d*) In cities, $400.

Income.

(3) The rating for income shall be in respect of income from a trade, office, calling or profession of not less than $400 which has been received during the twelve months next preceding the

final revision of the assessment roll or the twelve months next preceding the last day for making complaint to the Judge under *The Ontario Voters' Lists Act.* Rev. Stat. c. 6.

Where owner and occupant severally rated.

(4) If both the owner and the occupant are severally but not jointly rated, each shall be deemed to be rated.

Where land owned or occupied jointly.

(5) Where land is owned or occupied jointly by two or more persons who are rated at an amount sufficient, if equally divided between them, to give a qualification to all, each shall be deemed to be rated within the meaning of this section, otherwise none of them shall be deemed to be so rated.

Farmers' sons.

(6) A person not entitled under *The Assessment Act* to be entered on the last revised assessment roll as a farmer's son, shall be entitled to be entered on the voters' list if he has the other qualifications of a farmer's son as prescribed by that Act and has resided on the farm of his father or mother for the twelve months next preceding the date of the final revision of the assessment roll or for the twelve months next preceding the last day for making complaint to the judge under *The Ontario Voters' Lists Act.* Rev. Stat. c. 195. Rev. Stat. c. 6.

Occasional or temporary absence.

(7) Occasional or temporary absence from the farm for a time or times not exceeding in the whole six of the twelve months shall not disentitle a farmer's son to be entered on the voters' list. 3-4 Geo. V. c. 43, s. 56 (2-7).

"Full age of 21 years."—See notes to s. 13 (1).

"Not disqualified under this Act or otherwise by law prohibited from voting."—See ss. 59, 60, 61, 187 (1).

"Last revised assessment roll."—See notes to s. 13 (1).

"Freehold."—See notes to s. 13(1).

"Farmer's son."—As to persons entitled to be entered on the last revised assessment roll as a farmer's son, see R.S.O. c. 195, s. 25. See also, as to **"residence,"** In re Fitzmartin (supra), in notes to s. 13.

The son of an owner of land is qualified to be a voter although he may reside elsewhere than on the immovable which qualifies his father if he resides with him. The son of a farmer must have worked for a year on the lands by which his father qualifies. One who claims in his capacity of farmer's son to be placed on the list but who has not fulfilled this condition cannot be placed on it if he has not made good his title as owner's son, which gives him a right to be there: Drouin v. Sainte Monique (1899), 5 Rev. de Jur. 243 (Que.).

"Population" is determined as provided by s. 2 (cl. (*m*)).

"Owner."—

A person who has applied for a homestead entry, but was not in possession nor had received his certificate, was held not to be the owner of the land within the meaning of an enactment which provided that "owner" includes any person who has any right, title or estate whatsoever or any interest other than that of a mere occupant in any land: In re Clark (1906), 3 W.L.R. 311.

As to the meaning of the word "owner," see Wynne v. Dalby (1913), 29 O.L.R. 62, 30 O.L.R. 67, 13 D.L.R. 569, 16 D.L.R. 710.

In a by-law which required every owner or occupant of land upon which there was a well to cover it when it was not in use, the term "owner" must be read "owner in occupation," and not the owner when the land is occupied by a tenant of his: Love v. Machray (1912), 22 Man. L.R. 505, 1 D.L.R. 674, 20 W.L.R. 505, 1 W.W.R. 925.

Subs. 5 does not apply to the qualification of candidates: Rex ex rel. Milligan v. Harrison (1908), 16 O.L.R. 475, 479.

Unorganized Territory.

In re Hagar Voters' List (1911), 17 O.W.R. 1, in which it was held that in an unorganized district under R.S.O. 1897, c. 225, s. 18, only male persons assessed for less than one hundred dollars are entitled to be placed on the voters' list, and that widows who are resident householders have no such right, is no longer law. After the first election, the qualification of electors in unorganized territory is the same as in territory having county organization.

British Columbia Cases.

To qualify as a voter at a municipal election under s. 6 of The Municipal Elections Act, as enacted by sec. 2 of The Municipal Elections Amendment Act, 1902, with respect to real estate, it is necessary that the applicant should be the registered owner of it under s. 74 of The Land Registry Act, 1906, c. 23: In re Kaslo Municipal Voters' List (1907), 12 B.C.R. 362.

The holder of an agreement for the purchase of land is not an owner within the meaning of The Municipal Elections Act entitled to vote at municipal elections: Perry v. Morley (1911), 16 B.C.R. 91, 16 W.L.R. 691.

Quebec Cases.

In Quebec there is nothing to prevent any person from buying such property as will be sufficient to qualify him as a municipal elector in any municipality as he pleases: Herbert v. Saint Michel (1910), 18 Rev. de Jur. 228.

A person who sells land subject to a right of redemption divests himself of his rights of property in the thing sold, and retains merely the personal right to redeem it within the time stipulated. Real estate thus sold does not confer electoral qualification upon its vendor within the meaning of art. 5364 of the Revised Statutes of Quebec, 1909, during the time it is held by the vendee, although the vendor remains in possession as tenant: Levasseur v. Pelletier (1911), Q.R. 40 S.C. 490.

School teachers, professors and heads of institutions of learning should be inscribed on the voters' list of the municipality where they have their institution or house even when they give no instruction there if they do give it in other places in the province: Jodoin v. St. Hyacinthe (1912), Q.R. 43 S.C. 123.

It is necessary that the name of a real estate owner should be placed on the valuation roll in order to be included in the list of voters for a municipal election, although it is not required for the voters' list at an election for the House of Commons: Hobkirk v. Lasalle (1913), 14 Que. P.R. 421.

The owner of a house in a rural municipality in which he resides each summer for five or six months, who carries on business in another municipality, in which he lives in rented premises for the remainder of the year, has the right, on declaring that the house which he owns is his principal establishment, to be inscribed on the list of voters of the municipality in which it is situate: Godbout v. St. Laurent (1912), Q.R. 43 S.C. 158.

An unmarried school teacher who occupies rooms in a town near the place where he teaches, but passes his vacation and leisure time with his parents in another municipality, where he had formerly been domiciled and where he has a room at his disposal, is rightly inscribed on the list of voters of the latter municipality where he deposes that he never had any intention of changing his domicile.

So also in the case of the owner of a house where he is domiciled who retains the ownership of it and lives there for four months in each year, but resides in another municipality for eight months to carry on business there, but without any intention of changing his domicile.

Demers v. St. Nicolas (1913), Q.R. 43 S.C. 321.

See also In re Ellis (1910), 2 O.W.N. 27, (1911) 23 O.L.R. 427; The South Perth Election Case (1899), 2 Election Cas. 144; The Port Arthur and Rainy River Election Case (1907), 14 O.L.R. 345.

Right to Vote.

Right to vote.

57. Subject to sections 59, 60 and 61, every person whose name is entered on the proper voters' list shall be entitled to vote at a municipal election except that in the case of a tenant he shall not be entitled to vote unless he is a resident of the municipality at the date of and has resided therein for one month next before the election and in the case of an income voter and of a farmer's son, he is a resident of the municipality at the date of the election. 3-4 Geo. V. c. 43, s. 57.

"Resident."—See notes to s. 13 (1).

It is not necessary that a "freeholder" be a resident of the municipality.

No question of qualification to be raised at election. Exception.

58. Except as to the disqualification arising from his not residing in the municipality at the time of the election in the case of an income or farmer's son voter or from his not residing in the municipality for one month next before the election and at the time of the election in the case of a tenant, or from the non-payment of taxes in the case of a voter whose name appears on the defaulters' list, no question as to the qualification of any person whose name is entered on the proper list of voters shall be raised at an election. 3-4 Geo. V. c. 43, s. 58.

This section differs from the corresponding section of 3 Edw. VII. c. 19, s. 89, in that the exceptions do not appear in that section. As to these exceptions, see s. 57 (tenant, income voter and farmer's son), s. 95 (defaulters' list).

Where it appears that the voters' list has been prepared and revised in accordance with the Act, the Court will not go behind the revision and enquire into the qualification of the voters: In re Kerr and Gold (1914), 20 B.C.R. 589.

See also In re Ellis; South Perth Election Case, and the Port Arthur and Rainy River Election Case (supra notes to s. 56).

Where a voters' list is compiled in accordance with a practice followed of placing the names of holders of agreements for the purchase of land on the list as registered owners, the list is bad and an election held upon it will be set aside: Perry v. Morley (1911), 16 B.C.R. 91, 16 W.L.R. 691.

Persons in default for non-payment of taxes not to vote.

59.—(1) No person whose name appears on the defaulters' list provided for by section 95 shall be entitled to vote in respect of income in any municipality, or in respect of real property in a municipality, the council of which has passed a by-law under paragraph 9 of section 399, unless at the time of tendering his vote he produces and leaves with the deputy returning officer a certificate from the treasurer, or the collector, shewing that the taxes, in respect of which the default was made, have since been paid.

Certificate to be filed.

(2) The deputy returning officer shall file the certificate and note the same on the defaulters' list. 3-4 Geo. V. c. 43, s. 59.

Under art. 283 of the Municipal Code, to be eligible as a municipal councillor, it is necessary to be an elector, and to be an elector it is necessary, amongst other things, to have paid all the municipal taxes and school taxes due at the time: Boissonnault v. Couture (1897), Q.R. 11 S.C. 523.

A personal tax imposed upon persons taxable under the Municipal Code only, is exigible from a man whose wife's name is on the valuation and collection rolls as owner of taxable personal property and has paid the taxes on it. A husband who, in such circumstances, has not paid this tax is not qualified as a municipal elector.

A husband cannot qualify as an elector on land owned by his wife unless his name is inscribed on the valuation roll.

Julien v. Bernier (1907) Q.R. 31 S.C. 481.

A municipal Council having statutory authority to declare by resolution or by-law that the water rates should be payable by instalments passed a resolution allowing the ratepayers to pay them for the year then current by instalments, and this resolution was confirmed by statute. By statute no tenant has a right to vote at an election for mayor or aldermen unless he has paid, before the first day of December preceding the holding of the election, the amount of all taxes and assessments and of all instalments of water rates then due in virtue of a by-law passed under art. 260A, enacted by 59 Vict. c. 49, s. 15 (Q.). No by-law or resolution to this effect was adopted, but payment by instalments of water rates due on the 15th August, October, January and March, respectively, continued to be permitted. Held, that the delay for the payment of water rates had been accorded without legal authority and that a ratepayer, who, on the first day of December preceding a municipal election, had paid only two instalments of water rates, was not entitled to vote, and, therefore, could not contest the election of the candidate declared elected: Proulx v. Beausoleil (1898), Q.R. 13 S.C. 508.

Where it was not expressly provided in The Local Improvement Act that only electors who had paid their taxes might vote, the legislature, having amended the declaration to be signed by voters before voting so as to insert a declaration that their taxes were paid, must have intended that only those who could make the declaration could vote, and, therefore, where a majority of those voting had not paid their taxes, it was held that the election was irregular and it was set aside: Rex ex rel. Tobey v. McDonald (1908), 1 S.L.R. 114, 8 W.L.R. 83.

Clerk may give a casting vote only.

60. The Clerk of the municipality shall not be entitled to vote except to give a casting vote as provided by section 127. 3-4 Geo. V. c. 43, s. 60.

The clerk, if otherwise qualified, is entitled to vote on by-laws requiring the assent of the electors, but not to give a casting vote: s. 270.

Persons employed by candidates for reward not to vote.

61.—(1) No person shall be entitled to vote who, at any time, before or during the election, has been employed as counsel, agent, solicitor or clerk or in any other capacity by a candidate or by any other person at or in reference to, or for the purpose of forwarding the election, and who has received or expects to receive, either before, during or after the election, from any candidate or from any other person, for acting in such capacity, any money, fee, office, place or employment, or any promise, pledge or security therefor.

Exceptions.

(2) Subsection 1 shall not apply to a person who performs any official duty in connection with the election and who receives the fees therefor to which he is entitled. 3-4 Geo. V. c. 43, s. 61.

This section is the same as s. 13 (2, 3) of The Ontario Election Act (R.S.O. c. 8).

Before this section was enacted, "a person employed and paid by a candidate to act as scrutineer or for any other purpose in connection with municipal elections" was not entitled to vote: 5 Edw. VII. c. 22, s. 8.

Section 61 is wider and includes in the disqualification not only persons employed by a candidate, but persons employed by any other person.

It was held in Rex ex rel. FitzGerald v. Stapleford (1913), 29 O.L.R. 133, 13 D.L.R. 858, that the employment and payment of a voter to act as scrutineer, unless made in order to induce the voter to endeavour to procure the candidate's return, was not a corrupt practice.

Where territory added to city, town or village, or a new city, town or village, erected with added territory,

62. Where territory has been annexed to an urban municipality, or a town with additional territory erected into a city, or a village with additional territory erected into a town, or a new town or village erected, and an election takes place before and no voters' lists including such territory.

a voters' list including the names of the persons entitled to vote in such territory, or for the new town or village, is certified by the Judge, all persons who would have been qualified as municipal electors if such addition had not been made or the new town or village erected, shall be entitled to vote in the city, town or village at such election. 3-4 Geo. V. c. 43, s. 62.

The effect of this section is that persons whose names appear on the voters' list of the municipality from which the territory has been detached or from territory of which the new town or village has been formed are entitled to vote, subject, of course, to the other conditions prescribed by the Act.

NOMINATION MEETING.

Meeting for nomination of mayor, reeve, deputy reeves, etc.

63. Subject to subsection 4 of section 64 and to section 73 a meeting of the electors shall take place for the nomination of candidates for mayor and controllers in cities and towns and for reeve or reeve and deputy reeve or deputy reeves in towns, at the hall of the municipality annually on the last Monday in December, at ten o'clock in the forenoon. 3-4 Geo. V. c. 43, s. 63.

"Last Monday in December."—See s. 65 as to when it is Christmas Day.

The hour is according to standard time: R.S.O. c. 132.

The appointment of an election president by resolution of a municipal council (art. 296 of the Municipal Code) is not essential to the validity of the election. An unanimous appointment by a meeting of the electors is valid: Daoust v. Valois (1912), Q.R. 42 S.C. 318.

Meetings in cities, towns, etc., for nomination of aldermen, etc.

64.—(1) Subject to subsections 3 to 6, and to section 73, a meeting of the electors shall take place for the nomination of candidates for aldermen in cities and councillors in towns, to be elected by general vote, and for reeves, deputy reeves and councillors in villages and townships, annually at noon, on the last Monday in December, at the hall of the municipality, or at such place therein as may from time to time be fixed by by-law.

Place of nomination.

(2) Where the election of aldermen or councillors is by wards the meeting shall be held annually at noon on the last Monday in December at such places in each ward as may from time to

time be fixed by by-law, but the council of a town divided into wards may provide that the meeting for the nomination of candidates for councillors for the wards shall be held at the same time and place as the nomination for mayor.

Nomination of councillors in towns.

(3) The council of a city may by the by-law fixing the places for the nomination of candidates for aldermen, provide that the hour of nomination shall be half-past seven o'clock in the afternoon.

Hour for holding nominations in cities.

(4) The council of a town or village may by by-law provide that the meeting for the nomination of all candidates may be held at half-past seven o'clock in the afternoon.

In towns and villages.

(5) The council of a township may by by-law provide that the meeting for the nomination of all candidates shall be held at one o'clock in the afternoon.

In townships.

(6) Where a township adjoins an urban municipality, that municipality may be designated as the place of meeting for the nomination of all candidates. 3-4 Geo. V. c. 43, s. 64.

Where township adjoins urban municipality.

The hours mentioned in this section are according to standard time: R.S.O. c. 132.

65. The nomination meeting shall be held on the day fixed for it by or under the authority of this Act, except where it is Christmas Day, and in that case the meeting shall be held on the preceding Friday. 3-4 Geo. V. c. 43, s. 65.

If nomination day falls on Christmas.

The nomination meeting is to be held on the days appointed notwithstanding that the last Monday in December is a holiday other than Christmas Day or that the preceding Friday is a holiday, the contrary intention, which excludes the application of s. 28 cl. (h) of the Interpretation Act, R.S.O. c. 1, appearing by this section.

66. Where the incorporation of a new municipality takes effect on the 31st day of December as provided by section 31, the nomination and all proceedings incidental thereto and to the holding of the election on the 1st Monday of the January following

Nomination and polling in new municipality.

may be had and taken as if the incorporation had taken effect. 3-4 Geo. V. c. 43, s. 66.

Notice of nomination meeting.

67. The returning officer shall give at least six days' notice of the nomination meeting. 3-4 Geo. V. c. 43, s. 67.

These are clear days. See notes to s. 53 cl (*j*)

Nomination and proceedings incident thereto.

68.—(1) At all nomination meetings, the candidates for each office shall be proposed and seconded *seriatim*, and every nomination shall be in writing, shall state the name, residence and occupation of the candidate, and shall be signed by his proposer and seconder, both of whom shall be present, and filed with the returning officer within one hour from the time fixed for holding the meeting.

Non-compliance, effect of.

(2) Failure to comply with the provisions of subsection 1 shall not invalidate the nomination if it is received and acted on by the returning officer without objection.

Where only one candidate nominated for an office.

(3) If no more candidates are nominated for an office than are to be elected, the returning officer, after the lapse of one hour from the time fixed for holding the meeting, shall declare such candidate duly elected.

n what cases oll to be held.

(4) If more candidates are nominated for an office than are to be elected, the returning officer shall adjourn the proceedings until the first Monday in January next thereafter, when, unless there is an election by reason of the resignation of any candidate or candidates nominated, as in the next succeeding section provided, polls shall be opened in each ward or polling subdivision at such place or places as have been fixed by by-law. 3-4 Geo. V. c. 43, s. 68.

The requirement of sub-section 1 that the nomination paper "shall state the name, residence and occupation of the candidate" has been held to be directory only: Rex ex rel. Walton v. Freeborn (1901), 2 O.L.R. 165; but if objection is taken at the time and the nomination paper is not amended the presiding officer should then and there reject it: Ib. p. 168. See also The Two Mountains Election Case (1912), 47 S.C.R. 185, 7 D.L.R. 126.

If the nomination is received and acted on by the returning officer without objection, failure to comply with the provisions of sub-section 1 does not invalidate the election (sub-section 2).

There is no provision similar to that contained in subs. 3 for the closing of nominations, where more candidates than are to be elected are proposed: In re Parke (1899), 30 O.R. 498.

A returning officer may not, where two candidates are nominated, declare one of them to be elected because the other is disqualified: In re St. Vital Municipal Election, Tod v. Mager (1912), 1 D.L.R. 565, 20 W.L.R. 537, 1 W.W.R. 929 [following Pritchard v. Mayor of Bangor, L.R. (1888) 13 A.C. 241, 250, 253], affirmed (1912), 22 Man. L.R. 137, 3 D.L.R. 350, 21 W.L.R. 203, 2 W.W.R. 185.

Where three candidates are nominated to fill the places of two retiring councillors, the chairman of election, on petition to that effect, should declare a poll to permit the electors to elect two councillors out of the three candidates named, and has no right, even if he considers that one of the three candidates is certain to be elected, to address the meeting and ask if there is any opposition to his being declared elected, and he has no right to proclaim him elected, especially where there is a protest against it on the part of electors then present: Therrien v. Tisdale (1912), 18 Rev. de Jur. 412.

A returning officer at an election for aldermen held under The Cities and Towns Act, R.S.Q. 1909, arts. 5256 *et seq.*, cannot reject the nomination of a candidate on the ground that he has not the qualification of land owner required by art. 5364, but can only use this power when the nomination is not in the form required by arts. 5422 to 5428, and in such a case he is to inscribe the word "rejected" on the back of the nomination paper, with the reasons for the rejection, in order that another nomination can be presented before the expiration of the time allowed for nominations: Labadie v. Ringuet (1913), Q.R. 43 S.C. 374.

69.—(1) The returning officer shall, on the day of the nomination, post up in the office of the clerk the names of the persons nominated for the respective offices.

Names of candidates to be posted up.

This provision is directory only: In re Brandon Election (1911), 20 Man. L.R. 705, 17 W.L.R. 207.

After the names have been posted up, the clerk has no power to reject a candidate on the ground of disqualification and to declare the other elected: In re St. Vital Election (1912), 21 W.L.R. 203.

(2) At the nomination meeting or at any time before nine o'clock in the afternoon of the following day, or, if that day is a holiday, before noon of the succeeding day, any person nomi-

Resignation of person nominated.

nated for one or more offices may resign, or may elect for which office he is to remain nominated; and in default he shall be deemed to be nominated for the office for which he was first nominated.

A person who has resigned at the nomination cannot withdraw his resignation: In re Stoney Plain Municipal Election (1908), 8 W. L. R. 54 (Alta.)

When resignations to be in writing.

(3) Where he resigns after the nomination meeting the resignation shall be in writing, signed by him and attested by a witness, and shall be delivered to the clerk within the time hereinbefore mentioned.

Where a resignation is delivered to the clerk but not in time, it is nugatory and should be ignored: Rex ex rel. Pillar v. Bourdeau (1904), 3 O.W.R. 245.

Candidates to file declaration of qualification.

(4) In an urban municipality every candidate for any municipal office, shall on nomination day, or before nine o'clock in the afternoon of the following day, or if that day is a holiday before noon of the succeeding day, file in the office of the clerk a declaration, Form 2.

A candidate filed the declaration in due time, but the freehold property mentioned in it, owing to an incumbrance upon it, was not of sufficient value to qualify him. After his election and before taking office, he made the declaration required by s. 311 of 3 Edw. VII. c. 19, in which he set forth the freehold property, together with leasehold property, which was sufficient to qualify him, and it was held that "as the first declaration was sufficient in form, having in view its limited purpose, and the respondent, being in fact duly qualified for the election and having been elected . . ." it was "too late after the election to contend that the misstatement regarding the qualifying property mentioned in the first declaration is a ground for setting aside the election, which is otherwise free from objection": Rex ex rel. Martin v. Watson (1906), 11 O.L.R. 336-7.

In Rex ex rel. O'Shea v. Letherby (1908), 16 O.L.R. 581, the declarations filed omitted to state that the candidate was "not a citizen or subject of any foreign country," and that the estate in respect of which he qualified was assessed in his name or in the name of his wife on the last revised assessment roll of the municipality to the value specified in the declaration as required by 6 Edw. VII. c. 34, s. 10, and it was held that these omissions rendered the declarations invalid and could not be cured by section 204, and that the candidates must be deemed to have resigned and were not duly elected.

The opinion was expressed in this case that a declaration was invalid if made before the clerk. That it may be made before the clerk is now clear. See s. 145 and The Interpretation Act, R.S.O. c. 1, s. 23 (2), which provides that "any officer authorized to administer an oath or take an affidavit may take any declaration authorized or required by an Act of this Legislature."

Section 23 (1) of The Interpretation Act provides that

> "Where by an Act of this Legislature or by a rule of the assembly or by an order, regulation or commission made or issued by the Lieutenant-Governor in Council under a law authorizing him to require the taking of evidence under oath an oath is authorized or directed to be made, taken or administered, the oath may be administered, and a certificate of its having been made, taken or administered may be given by any one named in the Act, rule, order, regulation or commission, or by a Judge of any Court, Notary Public, Justice of the Peace or Commissioner for taking affidavits having authority or jurisdiction in the place where the oath is administered."

The declaration may, therefore, be made before any of the persons mentioned in this section or before any person named in section 145.

When declaration may be made by some one for candidate.

(5) Where a candidate is unable on account of illness or absence from the municipality to make the declaration or to file it within the time prescribed by subsection 4, and he appears by the last revised assessment roll to be qualified to be elected, the declaration of any person who has and states in the declaration that he has knowledge of the facts, that the inability exists and the nature of it and that he has reason to believe and does believe that the candidate possesses the qualification prescribed for the office for which he has been nominated and that if elected he will accept the office may be filed in lieu of the declaration of the candidate.

In Rex ex rel. Armstrong v. Garrett (1907), 14 O.L.R. 395, the respondent, being about to leave for England and intending to be a candidate at the ensuing election, made the declaration and filed it with the clerk on the 19th November. The respondent was nominated for the office of alderman, and the declaration was filed within the time prescribed by sub-section 4, and it was held that the requirement of that sub-section had been satisfied, but that, if it were otherwise, what was objected to was an irregularity, and that the curative provisions of s. 204 of 3 Edw. VII. c. 19, now replaced by s. 150, saved the election.

Sub-section 5 is designed to get rid of the difficulties that may arise if a candidate is, for the reasons mentioned in the sub-section, unable to make the declaration in due time.

Effect of failure to make declaration.

(6) If one or other of such declarations is not filed within the time mentioned in subsection 4, the candidate in default shall be deemed to have resigned, and his name shall be removed from the list of candidates and shall not be printed on the ballot paper.

Election by acclamation when other candidates retire.

(7) If by reason of resignations the number of candidates remaining for any office does not exceed the number to be elected the returning officer, whether the event happens on or after nomination day, shall declare the remaining candidate or candidates duly elected.

Result of nomination meeting.

(8) On the day following the nomination day, the returning officer for each ward shall certify to the clerk the result of the meeting. 3-4 Geo. V. c. 43, s. 69.

The hours mentioned in this section are according to standard time: R.S.O. c. 132.

Non-election of full council by reason of retirement of candidates.

70.—(1) Where the candidates, or any of them, retire, and by reason of such retirement or where from any other cause the requisite number of persons is not elected, the members elected, if they equal or exceed one-half of the council when complete, or a majority of such members, shall order a new election to be held to fill the vacancies.

Retirement by a majority of council.

(2) Where less than half the members of the council are elected, the clerk shall cause a new election to be held; and until such election is held, and the council is elected, the council of the preceding year shall continue in office.

New election, when to be held.

(3) The new election shall be held as soon as practicable. 3-4 Geo. V. c. 43, s. 70.

No procedure for holding the new election is provided, but it would seem reasonable that the proceedings in an analogous case, that of a vacancy occurring, which are provided for by subsecs. 2, 3, 4 and 5 of s. 156, should be followed.

Section 70 appears at first sight to conflict with s. 159, but they must be reconciled if it is possible to do so. It may be that section 70 is to be read as applying only to cases in which the result mentioned in it flows from the retirement of candidates or from the death of a candidate after nomination and before polling day, and section 159 to cases where the electors, if they had chosen to do so, might have elected a full council—as they might have done if a sufficient number of candidates had been nominated and had remained in the field until polling day. In the other case, the electors have not had an opportunity of electing a full council. The mode of filling the vacancies supports this view. Where the incompleteness of the council is due to something which the electors could not control—as the resignation or death of candidates—it is reasonable that a new election should be held to fill the vacancies, but where the failure to elect is attributable to the fault of the electors, it is not unreasonable that the members elected, if their number equals one-half of the membership, or, if not, the council of the previous year, should fill the vacancies.

Elections to be held annually.

71. Except in the case of the first election provided for by sections 24 and 27 and subject to section 73 the electors of every local municipality shall elect annually on the first Monday in January, although it is a holiday, the members of council, the water commisssioners, and the sewerage commissioners who are to be elected, except such as have been elected at the nomination. 3-4 Geo. V. c. 43, s. 71.

"Members of council" include head of the council and members of a Board of Control: s. 2 cl. (*i*).

Term of office of members, etc.

72. The members of a council shall hold office until their successors are elected and the new council is organized. 3-4 Geo. V. c. 43, s. 72 (1).

"The new Council is organized" see s. 193 (3).

By-laws for holding nominations on 23rd December and elections on New Year's Day in certain cities.

73. The council of a local municipality may, by by-law passed not later in the year than the 15th day of November, provide that the meeting of electors for the nomination of candidates for Mayor, Controllers, Aldermen, Reeves, Deputy Reeves, Councillors, and in urban municipalities, the Public School Board and the Board of Education shall be held on the 23rd day of December, except where that day is a Sunday, and in that case on the following day, and that the polling shall take place on the 1st day of January next thereafter, except where that day is a Sunday, and in that case on the following day, and the by-law shall remain in force from year to year until repealed. 3-4 Geo. V. c 43, s. 73; 4 Geo. V. c. 33, s. 4; 5 Geo. V. c. 34, s. 12.

Two years' term for councils may be adopted.

74. The council of a local municipality may by by-law passed with the assent of the municipal electors, extend the term of office of the members of the council to be thereafter elected to two years, and may with the like assent repeal such by-law. 3-4 Geo. V. c. 43, s. 74.

Election to be held in municipality.

75. Subject to subsection 6 of section 64 the election shall be held in the municipality. 3-4 Geo. V. c. 43, s. 75.

Election not to be held in tavern.

76. An election shall not be held in a tavern or in a house of public entertainment licensed to sell spirituous or fermented liquors. 3-4 Geo. V. c. 43, s. 76.

Appointment of places for nomination, and polling, deputy returning officers, etc.

77.—(1) The council of every local municipality in which the election is by wards or polling subdivisions, shall from time to time, appoint:

(*a*) The places for holding nominations for each ward;

(*b*) A returning officer to hold the nominations for each ward;

(*c*) The places at which polls shall be opened if a poll is required;

(*d*) A deputy returning officer and a poll clerk for each polling subdivision.

Election officers, how appointed in cities over 100,000.

(2) In a city having a population of not less than 100,000 the returning officers, deputy returning officers, and poll clerks shall be appointed on the recommendation of the clerk, and such appointments shall be made at least one month before polling day, and as far as practicable the deputy returning officers and poll clerks shall be appointed for polling places in the subdivisions in which they reside.

(3) If a poll clerk signifies to the returning officer in writing that he will not act, the returning officer shall appoint another person to act in his place.

Poll clerk refusing to act, etc.

(4) If a poll clerk does not attend at the opening of the poll the deputy returning officer shall appoint another person to act in his place.

Appointment of poll clerk by D.R.O.

(5) The clerk shall be the returning officer for the whole municipality; and if a poll is required, the deputy returning officers shall make to him the returns for their respective wards or polling subdivisions. 3-4 Geo. V. c. 43, s. 77.

Clerk to be returning officer for whole municipality.

"Population" is determined as provided by s. 2 cl. (*m*).

Where an appointment is made under sub-sections 2 and 3, it is advisable that it should be made in writing, in which the reason for making it should be stated.

78.—(1) In a local municipality which is not divided into polling subdivisions, the clerk shall be the returning officer for the nomination of candidates.

Returning and deputy officer where election not by polling subdivisions.

(2) The council shall from time to time appoint the place at which the poll shall be opened if a poll is required. 3-4 Geo. V. c. 43, s. 78.

Polling place.

Section 391 provides for dividing into polling subdivisions and establishing polling places in the subdivisions.

79.—(1) Where a by-law to appoint the place for holding any meeting required to be held for the nomination of candidates is necessary and the council fails to pass it the meeting shall be held at the place at which the nomination for the next preceding election was held.

Place for nomination and polling where council fails to fix places.

(2) Where the council fails to appoint all or any of the places at which a poll is to be opened if a poll is required, as to such of them as are not appointed, the polls shall be opened at the place or places at which the polling took place at the next preceding election. 3-4 Geo. V. c. 43, s. 79.

Refusal or neglect of returning officer or deputy returning officer to perform his duties.

80.—(1) Where the returning officer for any ward notifies the clerk that he is unable or that he refuses to act or does not attend at the time and place appointed by the clerk to receive his instructions and nomination papers, or where a deputy returning officer does not attend at the time and place at which he is required by the clerk to attend to receive his ballot box, voters' lists, and other election papers, the clerk shall appoint another person to act in his place.

When electors may choose returning officer.

(2) If at the time and place appointed for holding a nomination the returning officer does not attend to hold the nomination within fifteen minutes after the time appointed or if no returning officer has been appointed, the electors present at the place for holding the nomination may choose from amongst themselves a returning officer to hold the nomination.

Case of deputy returning officer not attending at poll.

(3) If at the time and place appointed for holding the poll the deputy returning officer does not attend within one hour after the time appointed, the clerk shall appoint another person to act in his place and shall furnish him with a ballot box, voters' lists and other election papers.

When electors not to choose deputy.

(4) In a city having a population of not less than 100,000 a deputy returning officer shall not be appointed unless a poll clerk has not been appointed or if appointed is not present, but the poll clerk shall act as deputy returning officer and he shall appoint some other person to be poll clerk.

Where returning officer or deputy is unable to perform his duties.

(5) If, during the polling, the returning officer or the deputy returning officer at a polling place becomes unable, through illness or other cause, to perform his duties, the poll clerk shall act in his place and shall perform all the duties of a returning officer or deputy returning officer, and may appoint some other person to act as poll clerk. 3-4 Geo. V. c. 43, s. 80.

"Population" is to be determined according to s. 2 cl. (*m*).

Where an appointment is made under subsecs. 1, 3, 4, it is advisable that it should be made in writing, in which the reason for making it should be stated.

Returning officers and deputy returning officers to be conservators of the peace.

81.—(1) A returning officer and a deputy returning officer from the time he takes the oath of office until the day after the close of the election or of the voting on a by-law shall be a conservator of the peace and shall have all the powers of a Justice of the Peace.

Arrest of person disturbing peace.

(2) A returning officer, a deputy returning officer or a Justice of the Peace may arrest or by a verbal order cause to be arrested and placed in the custody of a constable or of any other person a person who disturbs the peace and good order and may cause such person to be imprisoned under an order signed by him until an hour not later than the closing of the nomination, polling or voting as the case may be, and all constables and persons present when required shall assist the returning officer, deputy returning officer or Justice of the Peace in the performance of his duties under this subsection. 3-4 Geo. V. c. 43, s. 81.

Special constables may be sworn in.

82. A returning officer, a deputy returning officer, or a Justice of the Peace may appoint and swear in as many special constables to assist in the preservation of the peace and order as he may deem necessary; and any person liable to serve as constable, and required by a returning officer, a deputy returning officer, or a justice, to be sworn in as a special constable, if he refuses to be sworn in or to serve, shall incur a penalty of $20. 3-4 Geo. V. c. 43, s. 82.

The penalty is recoverable and may be enforced under the Summary Convictions Act, R.S.O. ch. 90 (see s. 498 (1)).

Ballot Boxes.

Ballot boxes to be furnished.

83.—(1) Where a poll is required, the clerk shall procure as many ballot boxes as there are polling subdivisions.

How made.

(2) The ballot boxes shall be made of durable material, provided with lock and key, and so constructed that the ballot papers can be deposited therein and cannot be withdrawn without unlocking the box.

Delivery of to deputy returning officers.

(3) Two days at least before polling day the clerk shall deliver a ballot box to every deputy returning officer.

"Two days at least" are clear days. See note to s. 53, cl. (j).

Clerk to preserve boxes for future elections.

(4) The ballot boxes, when returned to the clerk after the election, shall be preserved by him for use at future elections; and he shall have ready for use, at all times, as many ballot boxes as there are polling subdivisions.

Penalty for failure to furnish boxes.

(5) If the clerk fails to provide the ballot boxes he shall incur a penalty of $100 in respect of every ballot box which he fails to provide.

Deputy returning officers to procure boxes when not supplied.

(6) A deputy returning officer who has not been provided with a ballot box within the time prescribed, shall forthwith procure one to be made, and he may make a requisition upon the treasurer for payment of the cost of it, and the treasurer shall pay the same to the deputy returning officer. 3-4 Geo. V. c. 43, s. 83.

Ballot Papers.

Ballot papers to be printed.

84. Where a poll is required, the clerk shall forthwith cause to be printed a sufficient number of ballot papers for the purposes of the election. 3-4 Geo. V. c. 43, s. 84.

Ballot papers where election is by wards.

85.—(1) In cities and towns in which the aldermen or councillors are elected by wards, there shall be prepared one set of ballot papers for all the polling subdivisions containing the names of the candidates for mayor, another set for all the polling subdivisions containing the names of the candidates for reeve or reeve and deputy reeves, and another set for each ward containing the names of the candidates for aldermen or councillors for the ward.

Ballot papers where aldermen or councillors elected by general vote.

(2) In cities and towns where the aldermen or councillors are elected by general vote, there shall be prepared for all the polling subdivisions one set of ballot papers containing the names of the

candidates for mayor or mayor and reeve or mayor, reeve and deputy reeves, and another set containing the names of the candidates for aldermen or councillors.

Ballot papers for townships and villages.

(3) In villages and townships there shall be prepared one set of ballot papers containing the names of the candidates for reeve or reeve and deputy reeves and for councillors.

Ballot papers for controllers, etc.

(4) There shall also be separate sets of ballot papers for controllers and public utility commissioners. 3-4 Geo. V. c. 43, s. 85.

Ten candidates were nominated; the clerk, in making out the certified lists of the candidates' names, for the returning officers, omitted from one of them the name of one of the candidates. The omission was discovered at about half-past one o'clock of the first polling day, and the clerk then sent word to the returning officer to insert the omitted name in the poll book. Upon an application to set aside the election, it was held that it was not every irregularity that will vitiate an election; that the question to be decided was not as to the mere abstract ground of the omission of the name, but only what effect it had upon the final result of the election; and that, as it did not appear that the result would have been different if the omitted name had been properly entered on the list, the election should not be set aside: Reg. ex rel. Walker v. Mitchell (1868), 4 P.R. 218. See also Northcote v. Pulsford (1875), L.R. 10 C.P. 476.

It is probable that failure to comply strictly with the directions contained in this and the following section—*e.g.*, by the use of initials instead of the full Christian name, or in the arrangement of the names of the candidates—would be cured by s. 150 if the conditions prescribed by that section were found to exist. See also notes to s. 86.

"Public Utility Commissioners."—See The Public Utilities Act, R.S.O. c. 204.

"Public Utility" means "water, artificial or natural gas, electrical power or energy, steam and hot water." Ib. s. 2.

Form of ballot papers.

86. The ballot papers shall be according to Forms 3, 4, or 5, and shall contain the names of the candidates arranged alphabetically in the order of their surnames, or if there are two or more candidates for the same office with the same surname, in the order of their Christian names. 3-4 Geo. V. c. 43, s. 86.

"Where forms are prescribed, deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them": The Interpretation Act, R.S.O. c. 1, s. 28, cl. (d).

In In re Milne (1912), 25 O.L.R. 420, 1 D.L.R. 540, it was held by the Court of Appeal that where the form of ballot paper for the voting on a local option by-law was "for the by-law" and "against the by-law," instead of "for local option" and "against local option," as in the form prescribed (The Liquor License Act, R.S.O. 1897, c. 245, s. 141 (8), as enacted by 9 Edw. VII. c. 54, s. 10), the by-law must be quashed. That it lay upon the supporters of the by-law to make it appear that it was of such a nature as not to affect the substance of the voting or to be calculated to mislead and did not affect the result, and that the contrary was shewn.

In In re Giles (1910), 21 O.L.R. 362, a similar mistake was made, but the Court refused to quash the by-law. In the Milne case this case was distinguished on the ground that it was not there shewn that the mistake was of such a nature as to affect the substance of the voting or to be calculated to mislead or that it affected the result.

An election was set aside because ten ballot papers which were in form "dissimilar to those officially supplied."

In re Municipality of Burnaby (1912), 7 D.L.R. 785, 1 W.W.R. 676 (B.C.)

Polling Places.

Clerk to furnish deputy returning officers with ballot papers, etc.

87. Before opening the poll, the clerk shall deliver to every deputy returning officer the ballot papers for use in the polling subdivision for which he has been appointed, and shall furnish him with the materials necessary to enable voters to mark their ballot papers, and such materials shall be kept at the polling place by the deputy returning officer for the use of voters. 3-4 Geo. V. c. 43, s. 87.

Compartment for marking ballots.

88. Every polling place shall be furnished with a compartment in which the voters can mark their ballot papers screened from observation, and if it is not provided by the corporation the deputy returning officer shall furnish it, and the cost of it shall be repaid to him as provided by subsection 6 of section 83. 3-4 Geo. V. c. 43, s. 88.

In Reg. ex rel. Preston v. Touchburn (1876), 6 P.R. 344, the curative provisions of a section which corresponded with s. 204 of 3 Edw. VII. c. 19 were applied, and saved the election where the provisions of a section similar to s. 88 were violated, several voters having gone behind the compartment with the returning officer to mark their ballot papers.

See, however, In re Quigley (1911), 24 O.L.R. 622, and Stoddart v. Owen Sound (1912), 27 O.L.R. 221, in which it was held that the curative provisions of s. 204 (s. 150 of this Act) ought not to be applied where in the voting there has been a violation of the secrecy of the ballot.

See also In re Brandon Election (1911), 20 Man. L.R. 705, 17 W.L.R. 207.

Directions to Voters.

Directions to voters to be printed.

89. The clerk shall cause to be printed in conspicuous type a sufficient number of the directions for the guidance of voters, Form 6, for the purposes of the election, and shall deliver to every deputy returning officer as many of the printed directions, but not less than five, as the clerk may deem sufficient. 3-4 Geo. V. c. 43, s. 89.

Deputy returning officers to placard the directions.

90. Every deputy returning officer, before opening the poll, or immediately after he has received the printed directions from the clerk, if the same were not received before opening the poll, shall cause them to be placarded outside the polling place, and in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. 3-4 Geo. V. c. 43, s. 90.

The provisions of ss. 89 and 90 are probably directory only, and the failure to comply with them will not vitiate the election unless it is shewn that the omission to do what is prescribed has affected the result.

It has been held, however, in the case of a local option by-law, that the omission to furnish the "directions" to the deputy returning officers was a fatal objection: In re Salter (1902), 4 O.L.R. 51. An objection based on this ground was abandoned in In re Brandon election (1911), 20 Man. L.R. 705, 17 W.L.R. 207 (the case of a municipal election).

Voters' Lists, Poll Books.

Proper voters' list to be used at an election. Rev. Stat. c. 6.

91. The proper list of voters to be used at an election shall be the first and second parts of the last voters' list certified by the Judge and delivered or transmitted to the Clerk of the Peace under *The Ontario Voters' Lists Act*, with the supplementary list, if any, under section 93 or the list provided for by section 94. 3-4 Geo. V. c. 43, s. 91; 5 Geo. V. c. 34, s. 13.

See Reg. ex rel. Black v. Campbell (1909), 18 O.L.R. 269; Carr v. North Bay (1913), 28 O.L.R. 623, 13 D.L.R. 458.

Where in the preparation of a voters' list names are improperly struck from the list and an election is held on the list, it is held on a wrong principle and should be declared void.

Dimock v. Graham (1911), 45 N.S. 166, 9 E.L.R. 417.

Where the result of an election is attacked it is not necessary for the person attacking it to show that the persons whose names were struck off attempted to poll their votes and were not prevented from doing so. *Ib.*

For first election in new municipality.

92. For the first election in a new municipality for which there is no assessment roll, the clerk, instead of a voters' list, shall provide every deputy returning officer with a poll book, Form 7, and the deputy returning officer or the poll clerk shall enter in it in the proper column, the name of every person who tenders his vote, and, at the request of any candidate or voter, shall note opposite the name of such person, the property in respect of which he claims to be entitled to vote. 3-4 Geo. V. c. 43, s. 92.

The only municipalities to which this section can apply are a new town incorporated under s. 19 and a new union of townships formed under s. 26. The case of the formation of a township or of united townships in unorganized territory is provided for by ss. 24 and 27. The Act appears to be defective in not making provision for the qualification of voters and candidates in the cases to which this section applies.

Voters' lists on formation of new corporation, etc.

93.—(1) Where a district as defined by section 11 has been annexed to an urban municipality, or a town with additional territory erected into a city, or a village with additional territory into a town, or a new town or village is erected, and an election takes place before a voters' list including the names of the persons entitled to vote in such district, territory or for the new town or village is certified by the Judge, the clerk of the municipality to which the same was added, and in the case of a new town or village the returning officer shall prepare from the last certified voters' list of the municipality from which such district, territory, town or village was or became detached, a supplementary list of voters containing the names of and the other particulars relating to the persons who would have been entitled to vote in such district or territory if it had not been so detached.

(2) The supplementary list shall be signed by the clerk and attested by his declaration, and he shall deliver to every deputy returning officer a copy of so much of such list as relates to his polling subdivision. 3-4 Geo. V. c. 43, s. 93.

Clerk's duties as to supplementary lists.

Before whom declaration to be made, see notes to s. 69 (4).

94. In a municipality for which there is an assessment roll, but for which there is no voters' list certified by the Judge, the clerk shall, before the poll is opened, prepare and deliver to the deputy returning officer for every polling subdivision, a list signed by him and attested by his declaration, containing the names, arranged alphabetically, of all persons appearing by the then last revised assessment roll to be entitled to vote in that polling subdivision. 3-4 Geo. V. c. 43, s. 94.

Voters' list; when clerk to prepare.

As to the declaration, see notes to s. 69 (4).

The clerk, in making out this list, would have to determine from an examination of the assessment roll what persons appear to be qualified voters.

List of Defaulters in Payment of Taxes.

95.—(1) On or before the last Monday in December the treasurer of each local municipality, if the collectors' roll has been returned to him, or the collector, if the roll has not been so returned, shall prepare and verify by his declaration and shall deliver to the clerk an alphabetical list of—

Preparation of list of defaulters.

(*a*) All persons entered on the first and second parts of the voters' list in respect of income only, who have not paid the taxes on such income on or before the 14th day of December next preceding the election; and,

(*b*) In municipalities the councils of which have passed by-laws under paragraph 9 of section 399, all persons entered on the first and second parts of the voters' list, who have not paid all municipal taxes due by them on or before the 14th day of December next preceding the election.

List to be made for each polling subdivision.

(2) Where a municipality is divided into polling subdivisions, such a defaulters' list shall be made for each polling subdivision.

Certified copies to be furnished.

(3) The person who prepares the defaulters' list shall furnish to all persons applying for the same, certified copies of it and of the declaration, in the same manner as and for the same compensation for which copies of the voters' list are to be furnished. 3-4 Geo. V. c. 43, s. 95.

See notes to s. 69 (4) as to persons before whom declaration may be made.

Delivery of copies of voters' list, poll book and defaulters' list to deputy returning officers.

96.—(1) The clerk, before the poll is opened, shall at a time and place appointed by him deliver to the deputy returning officer for every polling subdivision a list, either printed or written, or partly printed and partly written, certified to be a correct list of voters for the polling subdivision, together with a blank poll book, Form 7, and also a copy of the proper defaulters' list prepared under section 95 for the polling subdivision.

Copies may be prepared by clerk of municipality or procured from Clerk of Peace.

(2) The list of voters may be prepared by the clerk or may be procured from the Clerk of the Peace; and in the latter case the Clerk of the Peace shall be entitled to six cents for every ten voters whose names are on the list. 3-4 Geo. V. c. 43, s. 96.

Certificates as to the Assessment Roll.

Clerk to give certificate of dates of final revision of assessment roll, etc.

97.—(1) The clerk, before the poll is opened, shall deliver to every deputy returning officer a certificate, Form 8, of

(*a*) The date of the final revision of the assessment roll, and

(*b*) The last day for making complaints to the judge with respect to the voters' list to be used at the election.

Fee for certificate.

(2) The clerk shall also give to any person applying for it a like certificate upon payment of twenty-five cents.

Penalty for neglect.

(3) For every contravention of subsection 2 the clerk shall incur a penalty of $200. 3-4 Geo. V. c. 43, s. 97.

The certificate is required for the purposes of the oath to be taken by the voter. See Form 9.

The penalty is recoverable and may be enforced under the Ontario Summary Convictions Act (R.S.O. c. 90). See s. 498.

In Municipalities without Polling Subdivisions.

In municipalities not divided into polling subdivisions, clerk to perform duties of deputy returning officers.

98. In municipalities not divided into polling subdivisions, the clerk shall perform the duties which in other cases are performed by deputy returning officers, and shall provide himself with the necessary ballot papers, the materials for marking ballot papers, the printed directions for the guidance of voters, copies of the voters' list, poll book and defaulters' list, and a certificate of the date of the final revision of the assessment roll, and the last day for making complaints to the judge with respect to the voters' list; and he shall perform the like duties with respect to the whole municipality as are imposed upon a deputy returning officer for a polling subdivision. 3-4 Geo. V. c. 43, s. 98.

Where and how often electors may vote.

Number of votes which may be given by each elector.

99.—(1) An elector shall be entitled to vote,

(*a*) once only for mayor, controller, reeve, first deputy reeve, second deputy reeve, and third deputy reeve;

(*b*) where the election is by general vote once only for as many candidates for any office as there are offices to be filled and once only for each of them.

Where election by general vote.

(2) Where the election is by general vote and an elector is qualified to vote in more than one ward or polling subdivision he shall vote only in that in which he resides if qualified to vote there, or if not qualified to vote there or if he is not a resident of the municipality, he may elect at which of such wards or polling subdivisions he will vote and shall vote there only.

Where aldermen, etc., elected by wards.

(3) Where the aldermen or councillors are elected by wards an elector if qualified to vote therein may vote in each ward for

as many candidates as there are offices to be filled and once only for each of them. 3-4 Geo. V. c. 43, s. 99.

"Resident."—See notes to s. 13 (1).

The penalty for voting oftener than the voter is entitled to vote is provided for by s. 138, cl. (g), and is recoverable and may be enforced under the Ontario Summary Convictions Act (R.S.O. c. 90). See s. 498.

It is not a corrupt practice, and where a candidate had voted twice it has been held that it is not a cause for setting aside the election: Rex ex rel. Tolmie v. Campbell (1902), 4 O.L.R. 25.

Certificate to entitle deputy returning officers, poll clerks, and agents to vote where stationed.

100.—(1) The clerk, at the request of an elector, who has been appointed deputy returning officer, poll clerk, or agent of a candidate, for any polling place other than the one at which he is entitled to vote, shall give to such elector a certificate that he is entitled to vote at the polling place where he is to be stationed during polling day; and the certificate shall state the property or other qualification in respect of which he is entitled to vote.

Right to vote on production of certificate.

(2) On the production of the certificate such elector shall have the right to vote at the polling place at which he is stationed instead of at the polling place at which he would otherwise be entitled to vote; and the deputy returning officer shall attach the certificate to the voters' list.

Certificate only to entitle officials who act.

(3) The certificate shall not entitle the elector to vote at such polling place unless he has been actually engaged as deputy returning officer, poll clerk, or agent during polling day, or to vote for aldermen in cities, or for councillors in municipalities divided into wards, except in the ward where he would otherwise be entitled to vote.

Who to administer oath.

(4) If a deputy returning officer votes at the polling place for which he has been appointed, the poll clerk, or in his absence any elector entitled to be present, may administer to the deputy returning officer the oath required by law to be taken by voters. 3-4 Geo. V. c. 43, s. 100.

Where electors not entitled to certificates obtained them and voted at polling places other than those at which they were entitled to vote, but certificates were given without discrimination to each party, and it was not shewn that the result had been affected, the election was upheld: In re Thompson Local Option By-law (1913), 23 Man. R. 361, 23 W.L.R. 786, 10 D.L.R. 493, 11 D.L.R. 247, 24 W.L.R. 199.

THE POLL.

Time for opening and closing poll.

101.—(1) The poll shall be opened at every polling place at nine o'clock in the forenoon and shall be kept open until five o'clock in the afternoon of the same day.

The mere presence of electors at the polling booth at four o'clock in the afternoon of the first day of polling is not a reason for postponing it to the following day if they have had time to vote but showed no intention of doing so, and the closing of the poll in such a case at four o'clock is lawful: Daoust v. Valois (1912), Q.R. 42 S.C. 318.

When at four o'clock of the evening of the first day of the polling there are in the polling booth electors who have not yet voted, the election president uses wisely his discretion in adjourning the meeting to the following day, although no vote has been polled during the last preceding twenty minutes. Lamontagne v. Paquet (1916), Q.R. 49 S.C. 419.

After having so adjourned the meeting the election president cannot withdraw his decision, close the election and proclaim elected the candidate who has received the majority of the votes. *Ib.*

By-law for extension of time.

(2) The council of a city may by by-law passed before the 15th day of November in any year extend the time for keeping open the poll until seven o'clock in the afternoon.

Vote by ballot.

(3) The votes shall be given by ballot. 3-4 Geo. V. c. 43, s. 101.

Deputy returning officer to show box empty to persons present and then lock and seal it.

102. The deputy returning officer shall, immediately before opening the poll, shew the ballot box to such persons as are present in the polling place, so that they may see if it is empty, and he shall then lock the box and place his seal upon it in such a manner as to prevent its being opened without breaking the seal, and he shall keep the box on a desk, counter or table or otherwise so that it is raised above the floor in full view of all present, and shall keep the box so locked and sealed. 3-4 Geo. V. c. 43, s. 102.

The hours are according to standard time: The Definition of Time Act, R.S.O. c. 132.

Proceedings by deputy returning officer on tender of vote.

103.—(1) Where a person tenders his vote, the deputy returning officer shall proceed as follows:

Name.

(*a*) Except where there is no voters' list he shall ascertain that the name of such person or a name apparently intended for it is entered on the voters' list for the polling subdivision.

"Except where there is no voters' list."—See ss. 92 and 94.

"A name apparently intended for it."—This provision should be liberally construed so as not to deprive any one of his right to vote, if the name which is entered on the voters' list is apparently intended for the name of the person claiming to be entitled to vote. Mistakes in spelling or in the Christian name or in the spelling of it and the like are immaterial.

In re Schumacher (1910), 21 O.L.R. 522, it was decided that Arthur S. Bashford was entitled to vote although his name was entered on the voters' list as "Bashford Geo. S."; that Jean Martha Dobie was entitled to vote although her name was entered as Margaret Dobie; that Henry E. Morgan was entitled to vote although his name was entered as Morgan Dr.; and that Elspeth Nichols was entitled to vote although her name was entered as Mrs. Nichols.

The fact that a voter's name is mis-spelled on the printed voters' list does not deprive him of the right to vote if he takes the prescribed oath: Rex ex rel. Sovereen v. Edwards (1912), 22 Man. L.R. 790, 8 D.L.R. 450, 22 W.L.R. 723, 3 W.W.R. 581.

Faulty spelling or the substitution of one family name for another *e.g.*, "Moreau" for "Morency," does not constitute a valid objection to receiving the vote when it appears to be simply an error of the copyist and that the identity of the person claiming the right to vote is not open to doubt: Langlois v. Auger (1904), Q.R. 29 S.C. 373.

Recording.

(*b*) He shall record, or cause to be recorded by the poll clerk, in the proper columns of the poll book the name, qualification, residence and occupation of such person.

Objection.

(*c*) Where the vote is objected to by any candidate or his agent, the deputy returning officer shall enter or cause to be entered the objection in the poll book, by writing opposite the name of such person in the proper column the words "*Objected to,*" and the name of the candidate by or on behalf of whom the objection was made.

(*d*) If such person takes the prescribed oath, the deputy returning officer shall enter or cause to be entered opposite such person's name, in the proper column of the poll book, the word "*Sworn,*" or "*Affirmed,*" according to the fact. Oath.

(*e*) Where such person has been required to take the oath and refuses to do so, the deputy returning officer shall enter or cause to be entered opposite the name of such person, in the proper column of the poll book, the words, "*Refused to be Sworn,*" or "*Refused to Affirm,*" according to the fact. Refusal to take the oath.

(*f*) After the proper entries have been made in the poll book, the deputy returning officer shall place or cause to be placed a check or mark opposite the name of the voter in the voters' list to indicate that he has voted, and shall then put his initials on the back of the ballot paper. Deputy returning officer to initial ballot paper and mark voters' list.

(*g*) The ballot paper shall then be delivered to such person. Delivery of to voter.

(*h*) The deputy returning officer may, and upon request shall, either personally or through the poll clerk, explain to the voter, as concisely as possible, the mode of voting. Deputy return ing officer to explain mode o voting.

(2) The vote of a person who has refused to take the oath shall not be received, and if the deputy returning officer receives such vote, or causes it to be received, he shall incur a penalty of $200. 3-4 Geo. V. c. 43, s. 103. Penalty.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act (R.S.O. c. 90). See s. 498.

104.—(1) The only oath to be required of a person claiming to vote shall be according to Form 9. Oath, etc., person claiming to vote.

(2) The voter shall be entitled to select any one of the forms of oath, whatever may be the description either in the voters' Voter may select any form of oath.

list or assessment roll of the qualification or character in which he is entered upon it.

When and how oaths are to be administered.

(3) The oath may be administered by the returning officer or deputy returning officer if he thinks fit, and shall be administered at the request of any candidate or his agent, and no inquiry shall be made of a voter, except with respect to the matters required to be stated in the oath or to ascertain if he is the person intended to be designated on the voters' list, or the assessment roll, as the case may be. 3-4 Geo. V. c. 43, s. 104.

The returning officer or deputy returning officer, without any request that he should do so, may administer the oath, and he should do so where he has a doubt as to the right of the person tendering his vote to vote, and it is his duty to administer the oath when requested so to do by any candidate or his agent.

Deputy returning officer to initial names of persons voting.

105. The deputy returning officer or the poll clerk shall place his initials in the appropriate column of the poll book opposite the name of every person who has voted for a candidate for the office named in that column. 3-4 Geo. V. c. 43, s. 105.

Marking ballot paper.

106.—(1) Upon receiving the ballot paper the person receiving it shall—

(*a*) Forthwith proceed into the compartment provided for the purpose, and shall then and there mark his ballot paper by placing a cross, on the right hand side, opposite the name of a candidate for whom he desires to vote, or at any other place within the division which contains the name of such candidate;

(*b*) Then fold the ballot paper so as to conceal the names of the candidates, and the marks upon the face of it, and to expose the initials of the deputy returning officer;

(*c*) Then leave the compartment without delay, and without showing the face of the ballot paper to any one, or so displaying it as to make known how he has marked it; and (*d*) Then deliver the ballot paper so folded to the deputy returning officer.

Duties of D.R.O. on receipt of ballot.

(2) The deputy returning officer, without unfolding the ballot paper, or in any way disclosing the names of the candidates, or the marks made by the voter, shall verify his own initials, and at once deposit the ballot paper in the ballot box in the presence of all persons entitled to be present and then present in the polling place; and the voter shall forthwith leave the polling place. 3-4 Geo. V. c. 43, s. 106.

See notes to s. 116.

The vote is not invalidated when the voter, with the approval of the deputy returning officer, himself puts the ballot paper into the ballot box: In re Duncan (1907-8), 16 O.L.R. 132.

Exclusion from balloting compartment.

107. While a voter is in a compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment, or to be in a position from which he can see how the voter marks his ballot paper. 3-4 Geo. V. c. 43, s. 107.

See notes to s. 88.

Voter not to take his ballot paper from polling place.

108. A person who has received a ballot paper shall not take, and the deputy returning officer may prevent him from taking it it out of the polling place and if he leaves the polling place without delivering it to the deputy returning officer in the prescribed manner or returns the ballot paper declining to vote he shall thereby forfeit his right to vote and the deputy returning officer shall make an entry in the poll book, in the column for "*Remarks*," to the effect that such person received a ballot paper, but took it out of the polling place, or returned it, declining to vote, as the case may be and in the latter case the deputy returning officer shall immediately write the word "*Declined*" upon the ballot paper and shall preserve it. 3-4 Geo. V. c. 43, s. 108.

Proceedings in case of incapacity to

109.—(1) The deputy returning officer on the application of a voter who is incapacitated by blindness or other physical cause mark ballot paper.

from marking his ballot paper, or who makes a declaration, Form 10, that he is unable to read, or where the voting is on a Saturday that he is of the Jewish persuasion and objects on religious grounds to mark his ballot paper in the manner prescribed by section 106, the deputy returning officer shall—

(*a*) In the presence of the poll clerk and the agents of the candidates, cause the vote of such person to be marked on the ballot paper in the manner directed by him, and shall place the ballot paper in the ballot box.

(*b*) Make an entry opposite the name of the voter in the proper column of the poll book, that his vote was marked in pursuance of this section, and of the reason why it was so marked.

Oral declaration.

(2) Where the voter objects on religious grounds to mark his ballot paper, the declaration may be made orally. 3-4 Geo. V. c. 43, s. 109.

Proceedings in case ballot paper cannot be used.

110. A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used, upon returning it to the deputy returning officer shall be entitled to obtain another ballot paper, and the deputy returning officer shall immediately write the word "*Cancelled*" upon the first mentioned ballot paper, and preserve it. 3-4 Geo. V. c. 43, s. 110.

It is not a condition precedent to the right to vote that the declaration should be made. The omission to make it is only an irregularity in the mode of receiving the vote, and is covered by the curative section 204 of 3 Edw. VII. c. 19, now s. 150: In re Ellis (1911), 23 O.L.R. 427.

See also The Prescott Election Case (1883), 1 Ont. E.C. 88.

What shall be deemed a tender of a vote and a voting.

111. A person who applies for a ballot paper shall be deemed to have tendered his vote; and a person whose ballot paper has been deposited in the ballot box, or who has delivered it to the deputy returning officer or poll clerk, for the purpose of having it deposited in the ballot box, shall be deemed to have voted. 3-4 Geo. V. c. 43, s. 111.

112. The deputy returning officer, the poll clerk, the constable or constables, the candidates and their agents, and no others, shall be permitted to remain in the polling place during the time the poll is open or at the counting of the votes. 3-4 Geo. V. c. 43, s. 112.

Who may be in polling place.

113. In cities in which the aldermen are elected by general vote a candidate shall be entitled to one agent only, and except in such cities a candidate in any municipality shall be entitled to two agents. 3-4 Geo. V. c. 43, s. 113.

Number of agents.

114.—(1) No person on the day of the polling shall use or deliver to any other person any card, ticket, leaflet, book, circular or writing soliciting votes for or against any candidate, or by-law, or for an affirmative or negative answer to any question, or having upon it the name of any candidate.

Use or delivery of election cards, etc.

(2) Every person who contravenes the provisions of subsection 1 shall incur a penalty not exceeding $20. 3-4 Geo. V. c. 43, s. 114.

Penalty.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O. c. 90. See s. 498.

Proceedings after the Close of the Poll.

115. Immediately after the close of the poll, the deputy returning officer shall first place all the cancelled and declined ballot papers in separate packets and seal them up, and shall then count the number of voters whose names appear by the poll book to have voted, and cause a certificate, in the following form:—"*I certify that the number of voters who voted at the election in this polling place is (stating the number in words) and that* ——— *was the last person who voted at this polling place,*" to be entered in the poll book on the line immediately below the name of the voter who voted last, and such certificate shall be signed by the deputy returning officer, the poll clerk, and any candidate or

Counting the votes.

agent present who desires to sign it; then, in their presence and in full view he shall open the ballot box and count the number of votes for each candidate, giving full opportunity to those present to examine each ballot paper. 3-4 Geo. V. c. 43, s. 115.

"Cancelled ballot papers."—See s. 110.

"Declined ballot papers."—See s. 108.

What votes to be rejected.

116. In counting the votes the deputy returning officer shall reject all ballot papers—

(*a*) Which have not been supplied by him; or

(*b*) By which votes have been given for more candidates than are to be elected; or,

(*c*) Upon which there is any writing or mark by which the voter can be identified, or which has been so torn, defaced or otherwise dealt with by the voter that he can thereby be identified;

but no word, letter or mark written or made or omitted to be written or made by the deputy returning officer on a ballot paper shall avoid it or warrant its rejection. 3-4 Geo. V. c. 43, s. 116.

Some general rules to be applied for determining whether a ballot paper is properly marked have been laid down.

In Woodward v. Sarsons (1875), L.R. 10 C.P. 733, 748, it was said that:—

"The result (*i.e.*, of the provisions of the Ballot Act) seems to be, as to writing or mark on the ballot paper, that, if there be substantially a want of any mark, or a mark which leaves it uncertain whether the voter intended to vote at all or for which candidate he intended to vote, or if there be marks indicating that the voter has voted for too many candidates, or a writing or a mark by which the voter can be identified, then the ballot paper is void, and is not to be counted; or, to put the matter affirmatively, the paper must be marked so as to show that the voter intended to vote for some one and to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted. If these requirements are substantially fulfilled then there is no enactment and no rule of law by which a ballot paper can be treated as void, though the other directions in the statute are not strictly obeyed. If these requirements are not substantially fulfilled, the ballot paper is void and should not be counted, and, if it is counted, it should be struck out on a scrutiny."

In The Bothwell Election Case (1884), 8 S.C.R. 676, 696, it was said by Ritchie, C.J.:—

"I find it impossible to lay down a hard and fast rule by which it can be determined whether a mark is a good or bad cross. I think that, whenever the mark evidences an attempt or intention to make a cross, though the cross may be in some respects imperfect, it should be counted, unless from the peculiarity of the mark made it can be reasonably inferred that there was not an honest design simply to make a cross, but there was also an intention so to mark the paper that it could be identified, in which case the ballot should, in my opinion, be rejected. But if the mark made indicates no design of complying with the law, but, on the contrary, a clear intent not to mark with a cross as the law directs, as, for instance, by making a straight line or a round O, then such non-compliance with the law, in my opinion, renders the ballot null, the irresistible presumption from such a plain and wilful departure from the terms of the statute being that it was so marked for a sinister purpose. I am aware that, in coming to this conclusion, I am differing from the decision in the case of Woodward v. Sarsons (supra), but I cannot bring my mind to the conclusion that a ballot should be refused when there is evidence of an honest attempt to make a cross."

The general rule was thus stated by Maclennan, J.A., in the West Elgin Case (1898) 2 E.C. 38, 40, 34 C.L.J. 461-2, 18 C.L.T. 249, 250:—

"If a ballot is so marked that no one looking at it can have any doubt for which candidate the vote was intended and if there has been a compliance with the provisions of the Act according to any fair and reasonable construction of it, the vote ought to be allowed."

And this, he said,

"Is the result of the authorities both here and in England."

WORDS OR NAMES WRITTEN OR MARKS MADE UPON A BALLOT PAPER WHICH RENDER IT VOID.

In the West Huron Case (1898), 2 E.C. 58, 34 C.L.J. 461, 18 C.L.T. 247, it was held by Osler, J.A., that a ballot paper, properly marked for the candidate Beck, was vitiated by having written on the back of it the surname of the candidate; that another ballot paper so marked, but having written the word "Joe," being an abbreviation of the candidate's Christian name before his name, and that another ballot paper so marked, but having the word "vote" written after the candidate's name, were properly rejected.

A different conclusion was reached by Maclennan, J.A., in the West Elgin case (supra), though he held that a ballot paper properly marked for a candidate, but having written on the back of it the name "John Cairns," was properly rejected.

In the Lennox Election Case (1902), 4 O.L.R. 378, 381, Maclennan, J.A., after referring to this difference of opinion, said that he had conferred with Osler, J.A., and that the result of their conference was that:—

"After considering all the reported cases on the subject, both here and in England," they "were both of opinion that any written word or name upon a ballot, presumably written by the voter, ought to vitiate the vote as being a means by which he could be identified."

He also said that they thought that:—

"In general, other marks ought not to have that effect without deciding that particular cases may not arise in which it ought to be held otherwise."

And he held that a ballot paper, properly marked, but having in the candidate's division the initials "S.A.," in small but legible capitals, was properly rejected.

See also The North Victoria Election Case (1874), Hodgins' E.C. 671, 681, and The Monck Election Case (1876), Hodgins' E.C. 725, 731.

The letters "D.F.," written on the back of the ballot paper, do not vitiate the vote: The West Elgin Election Case (supra), p. 45; nor the words, "Mr. McNish, West Elgin," in pencil, on the back of a ballot paper marked for the candidate MacNish (Ib.), nor the name "MacNish" on the face, in pencil, in that candidate's division, in addition to a proper cross (Ib.).

But see what was said in The Lennox Election case (supra) as to these rulings.

The word "for," written after the cross, does not void the ballot paper: The South Oxford Election Case (1914), 32 O.L.R. 1, 10, 20 D.L.R. 752.

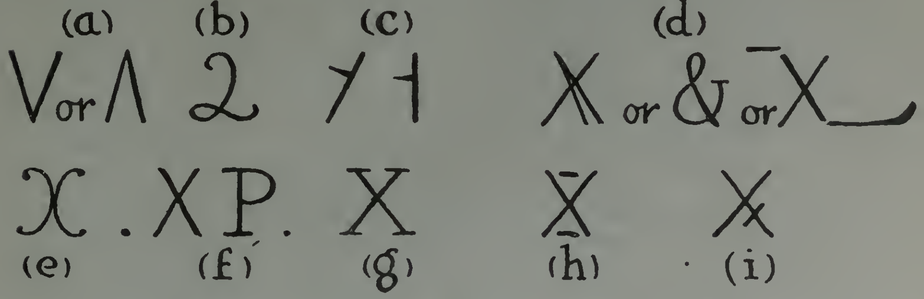
The figures "93," before the Deputy Returning Officer's initials, on the back of a ballot paper, properly marked for a candidate, do not vitiate it: The South Oxford Election Case (supra), p. 13; nor does a straight line in pencil under part of the name of the candidate in whose division the cross is placed or a line before the cross, nor does the addition of irregular pencil markings under a candidate's name (Ib. p. 12).

The West Huron Election Case (supra) was followed in The North Grey Election Case (1902), 4 O.L.R. 286, 289, and in The Halton Election Case (1902), 4 O.L.R. 345, 348, and ballot papers marked with the surname of the candidate in whose division the cross was placed were rejected.

The difference between the Dominion Election Act under which it was held that ballot papers upon the back of which the deputy returning officer had placed numbers corresponding to those opposite the voters' names in the voters' list must be rejected (The Wentworth Election Case (1905), 9 O.L.R. 201, 36 S.C.R. 497) and the Ontario Election Act, the provisions of which are the same as those of section 116, was pointed out in the Stormont Election Case (1905), 17 O.L.R. 171, 174.

Marks which are a sufficient compliance with the requirements of s. 106 (1) cl. (*a*).

The following marks have been held to be sufficient:—



(*a*) The Bothwell Election Case (supra), p. 696; The West Huron Election Case (supra), p. 58; The North Grey Election Case (supra), pp. 290-1; The Halton Election Case (supra), p. 348; The South Oxford Election Case (supra), pp. 10-12.

(*b*) The Prince Edward Election Case (1905), 9 O.L.R. 463, 465.

(*c*) The Queen's County Election Case (1883), 7 S.C.R. 247, 252.

(*d*) The West Huron Election Case (1905), 9 O.L.R. 602-3.

(*e*) The Queen's County Election Case (supra), p. 254.

(*f*) Woodward v. Sarsons (supra), pp. 736, 749.

(*g*) The North Victoria Election Case (supra), pp. 678-9.

(*h*) Ib.

(*i*) In the centre of the candidate's name: The South Oxford Election Case (supra), pp. 11-12.

A star.—The Monck Election Case (supra), p. 732; The South Oxford Election Case (supra), p. 13.

"A sprawling sort of a cross."—A cross, one of the lines of which was indistinct at and for a very short distance on both sides of the intersection, but still quite visible, and an "unusually large cross," the intersection of which was wholly within the candidate's division, though the arms extended into that of the other candidate: The West Elgin Election Case (supra), p. 46.

Crosses on the upper line of the candidate's division.—The Queen's County Election Case (supra), p. 250.

A cross, (1) although there was in the other candidate's division a thin, faint, upright pencil mark on the upper edge not indicative of any intention to make a cross, or (2) although in the division of the candidate for whom the ballot paper was marked there was another slight irregular pencil marking or a series of slight, cloudy, formless pencil markings.—The North Grey Election Case (supra), p. 290.

A cross, although there was a faint mark in the division of the other candidate apparently unintentionally made.—The Halton Election Case (supra), p. 348.

Clumsy and ill-made crosses.—The North Victoria Election Case (supra), p. 679; The Halton Election Case (supra), p. 348.

A mark which does not lose entirely the figure of a cross.—The Monck Election case (supra), p. 730; The Bothwell Election Case (supra), p. 696.

Crosses made with a pen.—The Monck Election Case (supra), p. 733; The South Oxford Election Case (supra), p. 4.

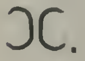
Crosses, although in another candidate's division there are marks which otherwise would invalidate the vote where it appears that the voter has obliterated or endeavoured to obliterate them.—The Monck Election Case (supra), p. 734; The North Grey Election Case (supra), p. 289; The Halton Election Case (supra), p. 345, 6; The South Oxford Election Case (supra), p. 12.

A cross outside but near the upper line or boundary of a candidate's division.—The Lennox Election Case (supra), p. 380. That case was followed in The Halton Election Case (supra), p. 347; and a ballot paper marked with a clear cross on the right margin below the lower line of a candidate's division as defined on the ballot paper was counted for that candidate.

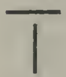
Where the ballot paper is properly marked with a cross, the addition of one or more crosses does not invalidate the vote.—The Monck Election Case (supra), p. 734; Woodward v. Sarsons (supra), p. 749; The Bothwell Election Case (supra), p. 696, 7; The Halton Election Case (supra), p. 348.

MARKS WHICH ARE NOT SUFFICIENT.

The following marks have been held to be not sufficient:—



The Queen's County Election Case (supra), p. 254.



The South Oxford Election Case (supra), p. 10.

The reason for the rejection in the first case was, no doubt, that the loops did not touch, and for the rejection in the second case that the lines did not touch.

A single vertical horizontal or slanting line, or several such lines.—The North Victoria Election Case (supra), p. 680; The Monck Election Case (supra), pp. 733, 4, 5; The Queen's County Election Case (supra), p. 253; The West Elgin Election Case (supra), p. 45; The West Huron Election Case (supra), p. 62; The North Grey Election Case (supra), pp. 289, 290; The Halton Election Case (supra), pp. 345, 6, 7.

A different view to that taken in these cases was expressed in Woodward v. Sarsons (supra), p. 749.

A cross when put only on the back of the ballot paper.—The South Wentworth Election Case (1879), Hodgins' E.C. 531, 536; The West Elgin Election Case (supra), p. 44; The North Grey Election Case (supra), p. 290; although it had been decided otherwise in The Monck Election Case (supra), p. 734.

A circle.—The Monck Election Case (supra), p. 733; The Bothwell Election Case (supra), p. 696; The Halton Election Case (supra), p. 347; The Lennox Election Case (supra), p. 381.

It must be remembered, in considering the numerous reported cases, that an important change was made in the law in 1880 by 43 Vict. c. 24, s. 4; as the law then was (R.S.O. 1877, c. 174, s. 141), it was required that the cross should be placed on the right hand side of the ballot paper opposite the name of the candidate for whom the elector desired to vote. The change made was to make it sufficient also if the cross were placed there "or at any other place within the division which contains the name of the candidate." See s. 106, cl. (a).

BALLOTS VOID FOR UNCERTAINTY.

In a South Perth election case there were three candidates, Frame, Monteith and Moscrip, whose names appeared in that order on the ballot papers, but, owing to a printer's error, the name "Monteith," in large capitals, was placed above instead of below the line which separated his division from that of Frame.

Where the cross was placed very nearly opposite to the large name "Monteith," but on the dividing line between the divisions of Frame and Monteith or above it, it was held that ballot papers so marked should not have been counted for Monteith on the ground that either they were marked for Frame or were void for uncertainty: The South Perth Election Case (1898), 2 E.C. 47.

TORN OR MUTILATED BALLOT PAPERS.

Where part of the ballot paper which had the official number upon it had been torn off, it was rejected (The West Huron Election Case (supra), pp. 61-2); but where what had been torn off was a section of the ballot paper about three-tenths of the whole width of it and of equal width from top to bottom, but having upon it none of the printed matter except perhaps part of "the lines from left to right separating the names of the candidates," it was held that the vote should be counted: The West Elgin Election Case (supra), pp. 42-3.

See also The Monck Election Case (supra), p. 734.

Cases in Other Provinces.

Stephen v. Flemming (1908), 42 N.S. 282, 4 E.L.R. 402. A ballot paper which had a finger mark or smudge on it. A ballot paper which had two crosses instead of one in the space opposite the name of the candidate. A ballot paper on which the voter had made his mark below the name of the candidate whose name was printed last in order on the ballot paper and below the double lines printed at the bottom of the paper, held good.

Where the ballot papers used at a municipal election were printed with a line separating the names of the two candidates and, in addition, a line above the name of the candidate first named and a line below the name of the candidate last named, three ballot papers which were marked with a cross at the right-hand upper corner of the ballot paper above the line separating the title from the name but clearly disclosing an intention to vote for the petitioner, were held to be properly counted for him; that the line printed above his name was not an essential part of the ballot paper which would have been good without it: McKinnon v. McNeil (1908), 42 N.S. 503.

The number on a ballot paper for voting at a municipal election relates to the candidate and cannot be regarded as something distinct from his name, and, therefore, whether the number be or be not separate from the name, it is none the less part of it, and a cross made in the place where the number is made is deemed in favour of the candidate and is valid: Robidoux v. Brunet (1910), 11 Que. P.R. 212.

bjections to e noted and ecided.

117.—(1) The deputy returning officer shall make a note of every objection taken to a ballot paper, by a candidate or his agent, and shall decide the objection subject to review on recount or in a proceeding questioning the validity of the election.

umbering bjections.

(2) Each objection shall be numbered, and a corresponding number shall be placed on the back of the ballot paper and initialed by the deputy returning officer. 3-4 Geo. V. c. 43, s. 117.

ccount to be ept of ballot apers.

118.—(1) All the ballot papers except those rejected shall be counted, shall be put into a packet, and an account shall be kept of the number of ballots cast for each candidate, and of the number of rejected ballot papers, and the rejected and unused ballot papers shall be put into separate packets.

Each packet to be endorsed and sealed.

(2) Every packet shall be endorsed so as to indicate its contents, and shall be sealed by the deputy returning officer, and any candidate or agent present may write his name on the packet and may affix to it his seal. 3-4 Geo. V. c. 43, s. 118.

In In re Ottawa Municipal Election (1895), 26 O.R. 106, 108, 109, an application was made for a mandamus to the Judges of the County Court of the County of Carleton commanding them to proceed with a recount of the ballot papers cast at the annual municipal elections in two of the city wards. The recount had begun, but both Judges had stopped because, on opening the ballot boxes, it appeared that the different classes of ballot papers had not been made up into separate packets, sealed and authenticated as required by this section. The mandamus was refused by Boyd, C., who held that the proper course had been taken by the Judges, and that the applicant must resort to the remedy provided by what is now section 161.

Cf. Woodward v. Sarsons (1875), L.R. 10 C.P. 733.

Statement of result to be made by deputy returning officer.

119.—(1) The deputy returning officer shall make out a statement in duplicate of—

(*a*) The number of ballot papers received from the clerk;

(*b*) The number of votes given for each candidate and the rejected ballot papers;

(*c*) The used ballot papers which have not been objected to and have been counted;

(*d*) The ballot papers which have been objected to, but which have been counted by the deputy returning officer;

(*e*) The rejected ballot papers;

(*f*) The cancelled ballot papers;

(*g*) The declined ballot papers;

(*h*) The unused ballot papers;

(*i*) The number of voters whose ballot papers have been marked by the deputy returning officer under section 109.

Disposal of statement.

(2) One statement shall be attached to the poll book, and the other shall be enclosed in a special packet and delivered to the clerk.

Signing of statement.

(3) The statement shall be signed by the deputy returning officer and the poll clerk and such of the candidates or their agents as are present, and desire to sign it.

Certificate of result of poll.

(4) The deputy returning officer shall deliver to such of the candidates or their agents as are present, if requested to do so, a certificate of the number of ballot papers counted for each candidate, and of the rejected ballot papers. 3-4 Geo. V. c. 43, s. 119.

Oath of poll clerk.

120. The poll clerk, immediately after the completion of the counting of the votes, shall take and subscribe an oath similar to that required by subsection 3 of section 122, to be taken by the deputy returning officer. 3-4 Geo. V. c. 43,s. 120.

Poll book voters' list and packets to be put in ballot box.

121. The poll book, the voters' list, the packets containing the ballot papers, and all other documents which served at the election, except the duplicate statement shall then be placed in the ballot box. 3-4 Geo. V. c. 43, s. 121.

Delivery of ballot box to clerk.

122.—(1) The deputy returning officer shall then immediately lock and seal the box, and any candidate or agent present may also affix to it his seal and the deputy returning officer shall then forthwith deliver it personally to the clerk, or if he is unable to do so owing to illness or other imperative cause, he shall deliver it to the poll clerk, or where the poll clerk is unable to act, to some person chosen by the deputy returning officer for the purpose of delivering it, and shall on it or on a ticket attached to it write the name of the person to whom the ballot box has been delivered, and shall take a receipt for it, and the poll clerk or person so chosen shall forthwith deliver the ballot box personally to the clerk and shall take and subscribe before him, the oath, Form 12.

(2) In cities and towns, the deputy returning officer, or in case of his inability, as mentioned in subsection 1, the poll clerk or the person chosen, shall proceed directly from the polling place to the office of the clerk with the ballot box, and there personally on the same day, as soon as possible after leaving the polling place, deliver it to the clerk, and the poll clerk or the person chosen shall take and subscribe before him the oath, Form 12, and the clerk shall remain in his office on the evening of the polling day until all the ballot boxes have been returned to him.

Return of ballot boxes, etc., in cities and towns.

(3) Forthwith thereafter the deputy returning officer shall take and subscribe the oath, Form 13, and shall personally deliver it or transmit it by registered post to the clerk. 3-4 Geo. V. c. 43, s. 122.

Oath of D.R.O.

123. The clerk, upon the receipt of a ballot box, shall take every precaution for its safe keeping and for preventing any other person from having access to it, and shall immediately on the receipt of it seal it with his own seal in such a way that it cannot be opened without his seal being broken, and that any other seals affixed to it are not effaced or covered. 3-4 Geo. V. c. 43, s. 123.

Duties of clerk as to ballot box.

124. A deputy returning officer in a city or town shall not under any circumstances take, or allow to be taken, the ballot box to his home, house, office, or place of business, or to any house or place except the office of the clerk. 3-4 Geo. V. c. 43, s. 124.

D.R.O. not to take ballot box to his home.

For penalty for violation of this section, see s. 138, cl. (h).

125. Where the holding of the election has been interrupted, as mentioned in section 128, the deputy returning officer shall delay making his return to the clerk until the polling has taken place. 3-4 Geo. V. c. 43, s. 125.

Return by D.R.O. when election interrupted.

126. The clerk, after he has received the ballot papers and statements of the number of votes given at each polling place,

Clerk to cast up votes and declare what

candidates elected.

without opening any of the sealed packets of ballot papers, shall cast up from the statements the number of votes for each candidate; and at the town hall, or if there is no town hall, at some other public place, at four o'clock in the afternoon in the case of a city having a population of not less than 100,000, and at noon in the case of other municipalities on the day following the return of the ballot papers and statements, shall publicly declare to be elected the candidate or candidates having the highest number of votes; and he shall also put up in some conspicuous place a statement under his hand shewing the number of votes for each candidate. 3-4 Geo. V. c. 43, s. 126.

"Population" is determined according to s. 2, cl. (*m*).

"Hours" are according to standard time: The Definition of Time Act (R.S.O. c. 132).

The clerk's duty under this section is ministerial only. He has no power to decide as to the qualification of a candidate, but is simply to declare to be elected the candidate or candidates having the highest number of votes: Pritchard v. Mayor, etc., of Bangor (1888), L.R. 13 A.C. 241.

In case of a tie clerk to have a casting vote.

127. If, upon the casting up of the votes or upon a recount, two or more candidates have an equal number of votes, the clerk, or other person appointed by by-law to discharge the duties of clerk, whether otherwise qualified or not, shall, at the time he declares the result of the poll, or after receiving the certificate of the result of the recount, as the case may be, give a vote for one or more of such candidates, so as to decide the election. 3-4 Geo. V. c. 43, s. 127.

Case of Election not held at Proper Time, etc.

Election not commenced, or interrupted by reason of riot, etc., to be resumed.

128. If, by reason of a riot or other emergency, an election, or the voting at a polling place, is not commenced on the proper day, or is interrupted after being commenced and before the lawful closing thereof, the returning officer, or deputy returning officer, as the case may be, shall hold or resume the election on the following day at the hour of nine o'clock in the forenoon, and continue the same from day to day until a fair opportunity for nominating candidates has been given or, in the case of polling, until the poll has been opened without interruption and with free access to voters for eight hours in all. 3-4 Geo. V. c. 43, s. 128.

[*As to postponement of an election on account of an epidemic or contagious disease, see The Public Health Act, Rev. Stat., c.* 218, *s.* 115.]

No inconvenience will occur owing to the delay in holding the election because the members of the old council remain in office until their successors are elected and the new council is organized: s. 72.

RECOUNT.

Recount of votes by County Judge, where ballot papers have been improperly counted or rejected.

129.—(1) If within fourteen days after the declaration by the clerk of the result of the election, upon the application of a candidate or voter it is made to appear by affidavit to a Judge of the county or district court of the county or district in which the municipality is situate, that a deputy returning officer, in counting the votes has improperly counted or rejected any ballot paper, or made an incorrect statement of the number of ballots cast for any candidate, and if within that time the applicant deposits with the clerk $25 as security for the costs in connection with the recount of the candidate declared to be elected, or if at any time within four weeks after such declaration in a city having a population of not less than 100,000, the council has by resolution declared that a recount is desirable in the public interest, the Judge may appoint a time and place to recount the votes.

Notice to candidates.

(2) At least two days' notice in writing of the time and place appointed shall be given to the candidates and to the clerk, and the clerk shall attend the recount with the ballot boxes and all documents relating to the election.

Who may be present at recount.

(3) The Judge, the clerk, and each candidate and his agent appointed to attend the recount, but no other person, except with the sanction of the Judge, shall be entitled to be present at the recount.

Opening of packets.

(4) At the time and place appointed, the Judge shall recount all the ballot papers received by the clerk, and shall in the presence of such of the persons entitled to be present as attend, open the sealed packets containing the used ballot papers which were not objected to and were counted; the ballot papers objected to, but which were counted; the rejected ballot papers; the cancelled ballot papers; and the unused ballot papers.

Recount to be a continuous proceeding.

(5) The Judge shall, as far as practicable, proceed continuously, allowing only time for refreshment and excluding, except so far as he and the persons present agree, the hours between six o'clock in the afternoon and nine o'clock in the succeeding forenoon, and during the excluded time the Judge shall place the ballot papers and other documents relating to the election close under his own seal, and the seals of such of the persons present as desire to affix their seals, and shall otherwise take all necessary precautions for the security of them.

Rules to govern Judge in proceedings.

(6) Subject to subsection 7 the Judge shall proceed according to the provisions for the counting of the ballot papers at the close of the poll by a deputy returning officer, and shall verify and correct the statement of the poll.

Evidence may be taken.

(7) If for any reason it appears desirable to do so, the Judge upon the application of any party to the proceeding may hear such evidence as he may deem necessary for the purpose of making a full and proper recount of the ballot papers.

Certificate of Judge as to result.

(8) Upon the completion of the recount the Judge shall seal up all the ballot papers in their separate packets, and shall forthwith certify the result to the clerk, who shall then declare elected the candidate having the highest number of votes.

Existing remedies not affected.

(9) Nothing in this section shall affect any remedy which any person may have under the provisions hereinafter contained by proceedings in the nature of *quo warranto* or otherwise. 3-4 Geo. V. c. 43, s. 129.

"Fourteen days."—These days are to be reckoned exclusive of the day on which the declaration is made and inclusive of the day on which the application to the Judge is made.

"At least two days."—These are clear days. See notes to s. 53, cl. (j).

"Population" is to be determined according to s. 2, cl. (*m*). See notes to s. 118.

On a recount in respect of a municipal election, the Judge is restricted to the verification of the ballots in the same manner as is done by a deputy returning officer, and he cannot annul the votes of electors on the ground of the omission of a formality required for the prevention of fraud: Ex parte Metayer *dit* Ste. Onge (1906), 7 Que. P.R. 386.

Costs.

130.—(1) The costs of the recount shall be in the discretion of the Judge, who may order by whom, to whom, and in what manner the same shall be paid.

Taxing of.

(2) The Clerk of the County or District Court shall tax the costs and shall, as nearly as may be, follow the tariff of costs of the County Court.

Deposit, disposal of.

(3) Where costs are directed to be paid by the applicant, the money deposited as security for costs shall be paid out to the party entitled to such costs, so far as necessary.

Recovery of costs.

(4) Payment of the costs may be enforced by execution, to be issued from any County or District Court, upon filing therein the order of the Judge and a certificate shewing the amount at which the costs were taxed and an affidavit of the non-payment of them. 3-4 Geo. V. c. 43, s. 130.

Secrecy of Proceedings.

Maintaining secrecy of proceedings.

131.—(1) Every person in attendance at a polling place or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting.

Interference with voters.

(2) No person shall interfere or attempt to interfere with a voter when marking his ballot paper, or obtain or attempt to obtain at the polling place information as to how a voter is about to vote or has voted.

Communicating information as to how voter has voted.

(3) No person shall communicate any information obtained at a polling place as to how a voter at such polling place is about to vote or has voted. 3-4 Geo. V. c. 43, s. 131.

For penalty for violation of this section, see s. 142.

Inducing voter to display ballot after marking.

132. No person shall, directly or indirectly, induce or attempt to induce a voter to show his ballot paper after he has marked it, so as to make known to any person how he has voted. 3-4 Geo. V. c. 43, s. 132.

For penalty, see s. 142.

Voter not to display marked ballot.

133. Subject to section 109 a voter shall not show his ballot paper, when marked, to any person so as to make known how he voted. 3-4 Geo. V. c. 43, s. 133.

For penalty, see s. 142.

Oath of secrecy.

134. Every returning officer and every officer, clerk, constable, agent and other person authorized to attend at a polling place, or at the counting of the votes, shall, before entering on his duties, take the oath of secrecy, Form 14. 3-4 Geo. V. c. 43, s. 134.

This provision is directory only, and the failure of the officers to comply with its requirements does not invalidate the election: Wynn v. Weston (1907), 15 O.L.R. 1; In re Brandon Election (1911), 20 Man. L.R. 705, 17 W.L.R. 207.

Proceedings where officers aware of violation of secrecy.

135.—(1) If a returning officer, deputy returning officer or poll clerk becomes aware, or has reason to believe or suspect, that any provision of the law as to secrecy has been violated, he shall forthwith communicate the particulars to the Crown Attorney.

Crown Attorney to prosecute.

(2) The Crown Attorney, on receiving such information from any person, shall forthwith enquire into the matter and, if proper, prosecute the offender. 3-4 Geo. V. c. 43, s. 135.

The provisions as to secrecy of proceedings should be strictly observed. The Courts are reluctant to apply the curative provisions of s. 150 where there has been a substantial violation of any of the provisions for protecting the secrecy of the ballot. See notes to s. 150.

136. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state how or for whom he has voted. 3-4 Geo. V. c. 43, s. 136.

No one compellable to disclose his vote.

This section must be construed in furtherance of the object of the Act as absolutely excluding such testimony: The Haldimand Election Case (D) (1888), 1 Election Cas. 529, 547-8; Rex ex rel. Ivison v. Irwin (1902), 4 O.L.R. 192; In re West Lorne Scrutiny (1911), 25 O.L.R. 267. See also In re Orangeville Local Option By-law (1910), 20 O.L.R. 476.

On the hearing of a petition under s. 192 of The Municipal Act, R.S.M., 1913, c. 133, setting out that the respondent was not duly elected by a majority of the lawful voters, evidence should not be admitted to show for which candidate any voter voted (s. 168), and, though it is shown that a number of persons voted who had no right to vote, it cannot be assumed that all these persons voted for respondent, and when the case depends on such an assumption it fails: Smith v. Baskerville (1914), 24 Man. L.R. 349, 28 W.L.R. 484, 6 W.W.R. 1074, following In re Lincoln (1878), 4 A.R. 206, per Moss, C.J.O., at 212, and distinguishing In re West Lorne Scrutiny (1913), 47 S.C.R. 451.

General.

137. Every returning officer, deputy returning officer, or other person whose duty it is to deliver poll books or who has the custody of a voters' list or poll book, who wilfully makes any alteration or insertion in or wilfully omits anything from or in any way wilfully falsifies such voters' list or poll book, shall incur a penalty of $2,000, and shall also be liable to imprisonment for any term not exceeding one year. 3-4 Geo. V. c. 43, s. 137.

Returning officers, etc., wilfully falsifying or altering list of voters to incur penalty.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act (R.S.O. c. 90): see s. 498; and the prosecution must be before a police magistrate or two justices: s. 498 (2).

138. Every person who—

Offences relating to ballot papers.

(*a*) Fraudulently alters, defaces or destroys a ballot paper or the initials of the deputy returning officer thereon; or

(*b*) Without due authority supplies a ballot paper to any person; or

(*c*) Fraudulently places in a ballot box a paper other than the ballot paper which he is authorized by law to place therein; or (*d*) Fraudulently delivers to the deputy returning officer to be placed in the ballot box any other paper than the ballot paper given to him by the deputy returning officer; or

(*e*) Fraudulently takes a ballot paper out of the polling place; or

(*f*) Without authority destroys, takes, opens, or otherwise interferes with a ballot box or book or packet of ballot papers or a ballot paper or ballot in use or used for the purposes of an election; or

(*g*) Applies for a ballot paper in the name of another person whether the name be that of a person living or dead, or of a fictitious person, or having voted applies at the same election for a ballot paper in his own name or votes oftener than he is entitled to; or

See notes to s. 99.

(*h*) Being a deputy returning officer, contravenes section 124, or fraudulently puts his initials on the back of any paper purporting to be or capable of being used as a ballot paper at an election; or

(*i*) With fraudulent intent, prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or

(*j*) Being employed to print the ballot papers for an election, with fraudulent intent prints more ballot papers than he is authorized to print; or

(*k*) Attempts to commit or aids, abets, counsels or procures the commission of any offence mentioned in this section;

if a returning officer, deputy returning officer or other officer engaged in the election, shall be liable to imprisonment for any term not exceeding two years, and, in the case of any other person, to imprisonment for any term not exceeding six months. 3-4 Geo. V. c. 43, s. 138.

Prosecutions for violations of this section are to be heard and determined by a police magistrate or two justices, but in other respects the provisions of The Ontario Summary Convictions Act (R.S.O. c. 90) apply: see s. 498 (2).

Persons unlawfully destroying, etc., documents, relating to elections, etc.

139.—(1) Every person who wilfully and maliciously destroys, injures or obliterates, or causes to be destroyed, injured or obliterated, a warrant for holding an election, a poll book, voters' list, certificate, affidavit, or other document or paper made, prepared or drawn according to or for the purpose of meeting the requirements of this Act or any of them, shall incur a penalty of $2,000, and shall also be liable to imprisonment for any term not exceeding one year.

Abettors punishable.

(2) Every person who aids, abets, counsels or procures the commission of a violation of subsection 1 shall incur the like penalty and be subject to the like imprisonment.

Recovery of penalty.

(3) The pecuniary penalty shall be recoverable by action at the suit of His Majesty, and the imprisonment may be directed by the court in which the action is brought. 3-4 Geo. V. c. 43, s. 139.

Penalty for D.R.O. omitting to initial ballots.

140.—(1) Every deputy returning officer who wilfully omits to put his initials on the back of a ballot paper in use for the purposes of an election, shall incur a penalty of $10 in respect of every such ballot paper.

D.R.O. or poll clerk neglecting duties.

(2) A deputy returning officer or poll clerk who refuses or neglects to perform any of the duties imposed upon him by sections 115 to 123 shall, for each refusal or neglect, incur a penalty of $200. 3-4 Geo. V. c. 43, s. 140.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act (R.S.O. c. 90): see s. 498.

Wilfully miscounting ballots, etc.

141. Every deputy returning officer or poll clerk who wilfully miscounts the ballots or otherwise makes up a false statement of the poll shall incur a penalty of $200. 3-4 Geo. V. c. 43, s. 141.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act (R.S.O. c. 90): s. 498.

Penalty for violating secrecy.

142. Every person who acts in contravention of sections 131 to 133 shall be liable to imprisonment for any term not exceeding six months. 3-4 Geo. V. c. 43, s. 142.

Prosecutions under this section are to be heard and determined by a police magistrate or two justices, but in other respects the provisions of The Ontario Summary Convictions Act (R.S.O. c. 90) apply: see s. 498 (2).

Money penalty for offences.

143. Every officer engaged in the election who is guilty of a wilful act or omission in contravention of this Act shall in addition to any other penalty or liability to which he may be subject forfeit to any person who may be aggrieved thereby the sum of $400. 3-4 Geo. V. c. 43, s. 143.

"Aggrieved," *e.g.*, by being prevented from voting.

"Wilful act or omission."—A returning officer at a municipal election "refuses at his peril to give a ballot paper to a person on the voters' list claiming the right to vote and willing, if required, to take the prescribed oath." The officer's refusal in such a case is a wilful act within the meaning of s. 168 of The Consolidated Municipal Act (1892), and renders him liable to the voter for the statutory penalty, without proof of malice or negligence: Wilson v. Manes (1898), 28 O.R. 419, (1899) 26 A.R. 398. (Johnson v. Allen (1895), 26 O.R. 550, was not followed.) A defeated candidate in a municipal election is not by reason only of his being a candidate a "person aggrieved" by a deputy returning officer committing breaches of The Election Act where the candidate suffered no personal grievance and did not lose his election or any votes by reason of the breaches (Atkins v. Ptolemy (1884), 5 O.R. 366); but a defeated candidate is a "person aggrieved" by the action of a returning officer in refusing to delay his return after receiving notice of a recount of ballots, because he was thereby prevented from exercising his legal right to have a recount: Hays v. Armstrong (1884), 7 O.R. 621. See also Hastings v. Summerfeldt (1899), 30 O.R. 577; Smith v. Carey (1903), 5 O.L.R. 203.

Miscellaneous Provisions.

Candidate may undertake duties of an agent.

144. A candidate may undertake the duties which his agent might undertake, or he may assist his agent in the performance of such duties, and may be present at any place at which his agent is authorized to be present; but no candidate shall be present at the marking of a ballot paper under section 109. 3-4 Geo. V. c. 43, s. 144.

Who may administer oaths re election.

145. Except where otherwise provided any oath required to be taken in connection with an election may be taken before the clerk of the municipality, a returning officer or a deputy returning officer, as well as before any other person by whom under *The Interpretation Act* an oath may be administered. 3-4 Geo. V. c. 43, s. 145.

Rev. Stat. c. 1.

"Oath" includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing: The Interpretation Act, R.S.O. c. 1, s. 29, cl. (*w*).

Ballot papers, how disposed of.

146.—(1) The clerk shall retain in his possession for one month all the ballot papers, and, unless otherwise directed by an order of a Judge or officer having jurisdiction to enquire as to the validity of the election, shall then destroy them in the presence of two witnesses, who shall make a declaration that they witnessed the destruction of them.

"Month" is a calendar month: Interpretation Act, R.S.O. c. 1, s. 29, cl. (*u*).

"Officer having jurisdiction."—See ss. 160, 161.

(2) The declaration shall be made before the head of the municipality and filed in the office of the clerk. 3-4 Geo. V. c. 43, s. 146.

Ballot papers to be inspected only by order of a Judge.

147.—(1) No person shall be allowed to inspect any ballot paper in the custody of the clerk except under the order of a Judge or an officer having jurisdiction to inquire as to the validity of the election.

Grounds for granting order.

(2) The order may be made on the Judge or officer being satisfied by affidavit or other evidence that the inspection is required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, or of taking proceedings for contesting the election or return.

Order may be subject to conditions.

(3) The order may be made subject to such conditions as the Judge or officer may deem proper. 3-4 Geo. V. c. 43, s. 147.

Only a person entitled to vote can apply under this section: In re Jarvis Local Option By-law (1915), 7 O.W.N. 751.

Production of documents and indorsements on ballot papers evidence for certain purposes.

148. Where an order is made for the production by the clerk of any document in his possession relating to an election, the production of it by him in such manner as may be directed by the order shall be evidence that the document relates to the election; and any indorsement appearing on any packet of ballot papers so produced shall be evidence that the contents are what they are stated to be by the indorsement. 3-4 Geo. V. c. 43, s. 148.

Expressions referring to agents.

149. Where in this Part expressions are used, requiring or authorizing any act or thing to be done, or implying that any act or thing is to be done in the presence of the agents of the candidates, they shall be deemed to refer to the presence of such agents of the candidates as are authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done; and the non-attendance of an agent at such time and place, if it is otherwise duly done, shall not invalidate the act or thing done. 3-4 Geo. V. c. 43, s. 149.

Non-attendance of agents.

No election to be invalid for want of compliance with provisions of Act where principles followed and result not affected.

150. No election shall be or be declared to be invalid—

(*a*) For non-compliance with the provisions of this Act as to the taking of the poll or anything preliminary thereto or as to the counting of the votes; or

(*b*) By reason of mistake in the use of the prescribed forms; or

(*c*) By reason of any mistake or irregularity in the proceedings at or in relation to the election;

if it appears to the tribunal by which the validity of the election or any proceeding in relation to it is to be determined that the election was conducted in accordance with the principles laid down in this Act, and it does not appear that such non-compliance, mistake or irregularity affected the result of the election. 3-4 Geo. V. c. 43, s. 150.

This provision was first introduced, though not in its present form, into The Municipal Act by 38 Vict. c. 28, s. 38, which was amended by 39 Vict. c. 5, s. 16.

An important change was made by this section.

Section 204 of 3 Edw. VII. ch. 19, which this section replaced, reads as follows:—

"No election shall be declared invalid by reason of a non-compliance with the provisions of this Act as to the taking of the poll or the counting of the votes, or by reason of any mistake in the use of the forms contained in the schedules to this Act, or by reason of any irregularity, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance, mistake or irregularity did not affect the result of the election."

The new section enlarges the cases to which it is applicable and changes the onus of showing that the result of the election was not affected. Under section 204 the onus of showing this was upon those supporting the election, but under the present section it is upon those attacking it.

There are numerous reported cases in which these curative provisions were invoked, most of them arising under section 204.

They were applied in the following cases:—

Reg. ex rel. Watterworth v. Buchanan (1897), 28 O.R. 352 (closing poll for ten minutes and town clerk taking place of deputy returning officer for two short periods during his absence, where result not affected).

In re Young (1899), 31 O.R. 108 (omission of names of voters from list of voters); Reg. ex rel. Preston v. Touchburn (1876), 6 P.R. 344 ((1) Persons improperly allowed to be in the polling places while voters marked their ballot papers; (2) Other persons allowed to enter with the voter into the compartment for voters marking their ballot papers and to remain there while he marked his ballot paper; (3) Poll book left on the returning officer's table in such a manner that voters and others could discern in which way a particular voter had given his vote); Rex ex rel. Roberts v. Ponsford (1902), 1 O.W.R. 590, 645 (voting more than once, where result not affected); Rex ex rel. Warr v. Walsh (1903), 5 O.L.R. 268 (error as to time and place of nomination meeting); In re Dillon (1905), 10 O.L.R. 371 ((1) Persons not entitled to be in polling place allowed to be there; (2) Failure of returning officer to perform duties required of him at and after the close of the poll; Rex ex rel. Cavers v. Kelly (1906), 7 O.W.R. 280, 600 (irregularities in declaration of qualification); In re Vandyke (1906), 12 O.L.R. 211 (mistake in publication of notice); In re Sinclair (1906), 12 O.L.R. 488, 13 O.L.R.

447, (1907) 39 S.C.R. 236 (failure to observe formalities not required by the statute in express words to be observed as a condition precedent to the right to pass the by-law); Wynn v. Weston (1907), 15 O.L.R. 1 (failure to make declaration of secrecy); In re Duncan (1907), 16 O.L.R. 132, 142, 146 ((1) Voter allowed to put ballot paper in ballot box; (2) Failure to appoint poll clerks where poll clerks for the municipal election held at the same time were appointed); In re Ryan (1910), 21 O.L.R. 582, 22 O.L.R. 200 (County Court Judge wrongly adding two names to the voters' list); In re Prangley (1910), 21 O.L.R. 54 ((1) No declaration of incapacity from blindness or other physical cause and in some cases ballot papers not marked in the presence of the agents and no entries made in the poll book as to these voters; (2) No poll clerk appointed; (3) Ballot paper marked according to the direction of a voter, but not by her); In re Ellis (1910), 2 O.W.N. 27, (1911) 23 O.L.R. 427 ((1) Omission by illiterates to make declarations; (2) In two cases of very elderly voters of their relatives being present when ballot papers being marked); Re Giles (1910), 1 O.W.N. 698, 21 O.L.R. 362 (mistake in form of ballot papers where result not affected); In re Schumacher (1910), 21 O.L.R. 522 ((1) Same irregularity as to illiterates as in In re Ellis; (2) Unauthorized persons present when electors voting); In re Wilson (1911), 2 O.W.N. 914, 916 (proper form of ballot box not used); In re Sturmer (1911), 24 O.L.R. 65, 2 D.L.R. 501, ((1) Discrepancy between by-law as printed and as finally passed as to the hour for the appointment of scrutineers; (2) honest mistake in omitting to enter in poll book in two cases that the voters had voted); Carr v. North Bay (1913), 28 O.L.R. 623, 13 D.L.R. 458 (directions of the Act as to polling subdivisions and polling places not followed); In re North Gower Local Option By-law (1913), 4 O.W.N. 1177, 5 O.W.N. 249, 10 D.L.R. 662, 24 O.W.R. 489, 14 D.L.R. 443, 25 O.W.R. 224 (irregularity as to taking the votes of illiterates); In re Sharp (1915), 34 O.L.R. 186, 24 D.L.R. 160 (disregard of requirements not shown to have affected the result).

The Courts have refused to apply the section in the following cases:—

In re Pickett and Wainfleet (1897), 28 O.R. 464 (failure to put up a copy of by-law stating hour, day and place for taking the votes and other irregularities); In re Salter & Beckwith (1902), 4 O.L.R. 51 ((1) Failure to post up notices; (2) Failure to furnish deputy returning officers with "directions to voters"); Rex ex rel. Ivison v. Irwin (1902), 4 O.L.R. 192 ((1) Tampering with ballot papers; (2) Breach of duty of deputy returning officer by taking ballot box to his own house instead of directly to the clerk); In re Bell (1906), 13 O.L.R. 80, and In re Kerr and Thornbury (1906), 8 O.W.R. 451 (omission in by-law to state the time and place where the votes were to be summed up); In re Rickey (1907), 14 O.L.R. 587 (failure to publish by-law each week for three successive weeks); In re Hickey (1908), 17 O.L.R. 317 (important violations of the Act, more especially of those provisions intended to secure the secrecy of the ballot); Rex ex rel. Macklin v. Thompson (1908), 11 O.W.R. 935 (disregard of directions for the secrecy and security of election by ballot); Rex ex rel. Black v. Campbell (1909), 18 O.L.R. 269 (use of wrong voters' list); In re Dale (1909), 1 O.W.N. 65 (premature sitting of Court of Revision to revise the assessment roll); In re Service (1909), 13 O.W.R. 1215 (permitting large crowds of people to be in the polling places during polling hours); In re Begg (1910), 21 O.L.R. 94 (failure to put up copies of by-law at four of the most public places in the municipality); In re Quigley (1911), 24 O.L.R. 622 ((1) Substantial violations as to furnishing compartments where voters could mark their ballot papers screened from observation; (2) Voters allowed to be in polling booths and in positions where they might and probably did see how voters were marking their ballot papers; (3) Voters allowed to remain in voting place after voting; (4) in three cases ballot papers taken into the street and allowed to be marked there; (5) Provisions for maintaining secrecy of the ballot violated); In re Milne (1911-12), 25 O.L.R. 420, 1 D.L.R. 540 (use of ballot papers marked "For the by-law" and "Against the by-law," instead of "For local option" and "Against local option"); Stoddart v. Owen Sound (1912), 27 O.L.R. 221, 8 D.L.R. 932 (entire disregard of many of the most important provisions of the Act and particularly of those affecting the secrecy of the ballot); Rex ex rel. Yates v. Lawrence (1915), 7 O.W.N. 819, 22 D.L.R. 599 (nomination meeting directed to be held at 7 p.m. instead of 7.30 p.m., where there was evidence that this prevented nominations which would have been made if the meeting had been held in accordance with the statute from 7.30 p.m. to 8.30 p.m.).

In In re Wall and Ottawa and In re Couillard v. Ottawa (1914), 6 O.W.N. 291, the ballot papers used for the voting upon by-laws for the reduction of shop licenses and tavern licenses, respectively, were headed, respectively, "Plebiscite re tavern licenses" and "Plebiscite re shop licenses," and, instead of voting upon a by-law, the voters were asked to vote upon a question, "Are you in favour of limiting the number of shop licenses in the city of Ottawa to ten for the ensuing license year, beginning 1st of May, 1914, and for all future license years thereafter until the by-law is altered or repealed," and a similar question with regard to tavern licenses, the number being thirty-six instead of ten, and the voter was required to mark his ballot paper "Yes" or "No." and it was held that this was the substitution of an entirely different form of ballot from that prescribed by the legislature and following In re Milne and Thorold (supra).

Of these cases the only ones decided since the change in the law are Rex ex rel. Yates v. Lawrence and In re Sharp, in the latter of which Hodgins, J.A., pointed out clearly what changes had been made and the effect of them.

Some of the cases in which the section was not applied would probably have been decided differently if the section had been in the form in which it now is.

It is difficult to deduce from the cases the principle upon which the question of the application of the section is to be determined.

Street, J., in In re Young (supra), expressed the view that "as a general rule an election should be held to have been conducted in accordance with the principles laid down in the Act, when the directions of the Act have not been intentionally violated, and when there is no ground for believing that the unintentional violation of them has affected the result": p. 111.

And Anglin, J., in In re Hickey (supra), indicated his view as follows:—

"The cardinal principles underlying the various provisions of the Act governing municipal elections appear to me to be that the electors shall have a fair opportunity for polling their votes and that the secrecy of the ballot shall be preserved. If a reasonable opportunity for voting has not been afforded, or if there has been a substantial disregard of the regulations prescribed to ensure the secrecy of the ballot, the election cannot, in my opinion, be said to have been conducted in accordance with the principles of the Act, and it is difficult to perceive how the respondents could satisfy the Court that the irregularity did not affect the result of the election": p. 328.

Subject to the observation that it does not now rest with the person supporting the election to satisfy the Court that the irregularity did not affect the result of the election, it is submitted that in the statements of these two Judges is to be found a good working rule for determining when the section should be applied.

CASES IN OTHER PROVINCES.

MANITOBA.

In re Hatch and Oakland (1910), 19 Man. L.R. 692, 14 W.L.R. 309, in which it was held that the deliberate closing of one of the polls for about an hour upon an adjournment for lunch, though with the consent of all persons present and in pursuance of a local custom, was fatal to the by-law in the absence of satisfactory evidence that the result of the voting had not been thereby affected.

In re Shoal Lake (1910), 20 Man. L.R. 36, 14 W.L.R. 302, in which it was held that the vote of an elector who requests assistance in marking his ballot paper cannot be taken without strict compliance with s. 119 of The Municipal Act, and when four votes were so taken without the oath prescribed by that section a by-law carried by only two was quashed because, without violating the secrecy of the ballot, it could not be shown that a majority of the electors voted for the by-law.

In re Shaw and Portage La Prairie (1910), 20 Man. L.R. 469, 14 W.L.R. 542, 15 W.L.R. 718, in which it was held that making provision for the appointment of agents at the polling places and the summing up of the votes by the clerk is essential to the validity of a by-law submitted to the electors for their assent.

In re Carman (1910), 20 Man. L.R. 500, 16 W.L.R. 380, in which it was held that the proceedings were defective and incapable of being cured where, in contravention of the statute, instead of one by-law complete in itself two were passed, one simply forbidding the receiving of any money for a license under The Liquor License Act, which was submitted to the vote of the ratepayers before its third reading, and another making the usual and necessary provisions for the taking of the vote on the first as required by The Municipal Act passed through its three readings at one session.

In re Brandon Election, Wallace v. Fleming (1911), 20 Man. L.R. 705, 17 W.L.R. 207, in which it was held that the following irregularities and omissions were not fatal:—

(1) That the clerk did not post up notices giving the names of the candidates in all the prescribed places.

(2) That the clerk did not furnish each of the deputy returning officers with copies of the provisions of the Act as to corrupt practices or put up one copy in his office and one in the postoffice.

(3) That most of the deputy returning officers, poll clerks and agents failed to take the oath of secrecy, there being nothing to indicate that the officials did not, in fact, substantially maintain the secrecy of the ballot or that they permitted any invasion of that principle.

(4) That the clerk, as returning officer, relieved the deputy and acted in his stead for a short time in each of three polling places on the polling day, although the ballots initialled by him were disallowed.

(5) That, in taking the votes of a large number of persons unable to read, the deputy returning officers went into the voting compartments with the voters and marked their ballot papers or caused them to be marked out of the sight of the agents of the candidates, and this without any declarations of inability to read having been made by the voters, as most of them were foreigners, unable to understand English, and the deputies apparently acted in good faith.

(6) That a number of the deputies failed to make the declaration as to the proper keeping of the poll book,

and In re Shoal Lake (1910), 20 Man. L.R. 36, 14 W.L.R. 302, was dissented from.

In re Thompson Local Option By-law (1913), 10 D.L.R. 493, 23 W.L.R. 786 (Man.), in which it was held that failure to post notices of the proposed voting in four or more of the most conspicuous places and to publish notice of the place of voting was fatal; and Little v. McCartney (1908), 18 Man. L.R. 323, 9 W.L.R. 448; Hall v. South Norfolk (1892), 8 Man. L.R. 430; Hatch v. Oakland (supra); Shaw v. Portage La Prairie (supra), were referred to as cases in which by-laws had been quashed because of failure to comply with preliminaries such as those in question.

This decision was reversed on the ground that the provisions of The Municipal Act as to posting and publishing were not applicable to a local option by-law: (1913) 23 Man. L.R. 361, 11 D.L.R. 247, 24 W.L.R. 199.

QUEBEC.

A by-law may be passed, after discussion, at a special meeting of the council where all the members are present if no one objects to proceeding on that day. The penalty of nullity provided for by art. 127 of the Municipal Code only applies to the case where there are absentees to whom notice of the meeting has not been given: Mongenais v. Rigaud (1897), Q.R. 11 S.C. 348.

The proceedings of a local municipal council at an adjourned special meeting, the *proces-verbal* of which does not state that notice was given to all the members, are void, and art. 16 of the Municipal Code and the absence of prejudice do not make them valid, as the case comes within the exception of the article respecting formalities required on pain of nullity: Desjardins v. Hebertville (1908), Q.R. 36 S.C. 295.

Article 118 of the New Municipal Code requires that the council, before proceeding to business at a special meeting, must set forth in the minutes of the sitting that notice of the meeting has been given in conformity with the requirements of the Code to all the members of the council who are not present at the opening of the meeting, and art. 14 provides that:—

"No objection founded upon form, or upon the omission of any formality, even imperative, in any act or proceeding relating to municipal matters, can be allowed to prevail in any action, suit or proceeding respecting such matters, unless substantial injustice would be done by rejecting such objection, or unless the formality omitted be such that its omission, according to the provisions of this Code, would render null the proceedings or other municipal acts requiring such formality."

The article of the previous Municipal Code corresponding to art. 118 was art. 127, and that corresponding to art. 14 was art. 16, and they contain respectively, in substance, the same provisions.

It had been previously held in Filiatrault v. Coteau Landing (1902), Q.R. 21 S.C. 302, which was not referred to in the judgment of the Court in Desjardins v. Hebertville, that the absence of mention in the minutes of the sitting of a municipal council at which a by-law is adopted that notice of the sitting has been sent to the absent councillors, is without effect on the validity of the by-law, if due notice has been given.

Although under the provisions of the Municipal Code respecting the ratification of by-laws by vote of the electors, the vote should be taken publicly and not in *camera*, if the mayor who presides over the taking of the vote excludes the public from the polling booth and permits electors to vote only one at a time, and the total vote cast in favour of the by-law represents an absolute majority of the electors on the roll and no fraud or prejudice is proved, the by-law should be held valid under art. 16 of the Municipal Code: Robitaille v. Quebec (1908), Q.R. 18 K.B. 184.

SASKATCHEWAN.

In In re Local Improvement District Number 11 A-3, In re Jones and Stribell (1909), 2 S.L.R. 80, 10 W.L.R. 508, in which it was held that the failure to post notice of the election, there being no evidence that, if it had been posted, the result of the election would have been different, and it not appearing that all the voters had not voted, was not fatal to the election.

Rex ex rel. Gunder Bjorge v. Zellickson (1910), 13 W.L.R. 433, in which it was held that an election under The Local Improvement Act of a councillor for a local improvement district is void where the election is not held in the manner prescribed by the statute in that persons who voted did not make the prescribed declaration, that the voting was by ballot, though that was not authorized by a resolution of the council, and that the poll was open for only half an hour.

In In re Mead and Moose Jaw (1911), 17 W.L.R. 14, the following irregularities were held to be fatal:—

(1) Alteration of petition after it was signed.

(2) Insufficient publication of notice of the voting.

(3) Failure to appoint a returning officer and to fix the time when and the place where the votes were to be summed up.

(4) Addition to printed directions to voters of an unauthorized illustration which, in effect, invited the electors to vote in favour of local option.

(5) Different polling places from those for the voting for mayor and aldermen.

In In re Salter and Local Improvement District No. 186 (1911), 17 W.L.R. 602, in which it was held that the omission to subscribe the year after the names of petitioners for the by-laws, insufficient statement of the time and place for the voting, and the alleged failure to fix the time and place for further consideration of the by-law, were not fatal to the by-law.

151. The reasonable expenses incurred by a clerk or any other officer for printing, providing ballot boxes, ballot papers, materials for marking ballot papers, and balloting compartments, and for the transmission of packets, and reasonable fees and allowances for services rendered under this Part, shall be paid to the clerk by the treasurer, and shall be paid by the clerk to the persons entitled thereto. 3-4 Geo. V. c. 43, s. 151.

Expenses incurred by officers to be repaid to them.

Vacancies in Council.

152. The seat of a member of a council shall become vacant if he—

Seat to become vacant by crime, insolvency, absence, etc. See Mearns v.

(*a*) Is undergoing imprisonment under sentence for a criminal offence; or

Petrolia, 1880, 28 Grant 98. Rev. Stat. c. 83.

(*b*) Becomes insolvent within the meaning of any Insolvent Act in force in Ontario; or

(*c*) Is in close custody under *The Fraudulent Debtors Arrest Act* or is discharged from close custody under section 53 of that Act; or

(*d*) Assigns his property for the benefit of his creditors; or

(*e*) Absents himself from the meetings of the council for three successive months without being authorized so to do by a resolution of the council entered upon its minutes;

and the council shall forthwith declare the seat to be vacant. 3-4 Geo. V. c. 43, s. 152.

"Member of a council."—See s. 2, cl. (h).

"Absents himself."—In Richardson v. Methley School Board, L.R. (1893) 3 Ch. 510, 516, Kekewich, J., dealing with a similar provision, said:—

"A member of the board cannot save his position by looking in casually and taking no part in the proceedings and being present only for a few minutes out of a long meeting. What is sufficient attendance must be decided according to the circumstances of each particular case."

"Three successive months."—See notes to s. 460 (infra).

The time is to be counted not from the last meeting at which the member was present, but from the first one which he failed to attend: Mearns v. Petrolia (1880), 28 Grant 98.

Quebec Cases.

A statute providing that if the disqualification of a person holding a municipal office is notorious or sufficiently established the council may by resolution declare the office vacant does not authorize the council to do so when the person unseated has made a sworn declaration of his property qualification and when the grounds of disqualification are doubtful and depend upon the interpretation of the articles of the Municipal Code, and in such a case the council may be ordered by mandamus to restore the ejected member to his privileges as such officer: Pelletier v. de Lorimier (1898), Q.R. 17 S.C. 509.

A municipal councillor whose seat has been illegally declared vacant may proceed by mandamus to have himself reinstated or he may attack the resolution by an ordinary action, and demand and obtain its nullity: Rouleau v. Ste. Lambert (1895), Q.R. 10 S.C. 69, 83.

In Schneider v. Petelle (1915), 21 R.L.N.S. 292, 22 Rev. de Jur. 55, noted under s. 53, it was held that if the fact that the defendant had worked as a labourer for the corporation and had been paid for his work were a contravention of art. 205 of the Municipal Code (art. 227 (11) of the new Code), it would result only in his incapacity to act as a councillor, but not in the forfeiture of his office; this incapacity to act having happened after his election would have no retroactive effect upon his election, and would have ceased with the facts of which it was only the consequence. It would have come to an end by payment for the work before the institution of the action and before any notice such as that prescribed by art. 207 of the Municipal Code or resolution such as that authorized by art. 208 had been given or adopted, from which it follows that he never had vacated his office of councillor according to the terms of art. 337 of the Municipal Code.

Where a municipal councillor has been required to furnish the declaration of qualification demanded pursuant to art. 283 of the Municipal Code (art. 229 of the new Code), the council cannot, before the expiration of the delay of eight days that the law allows for the production of the declaration, declare the seat vacant and name a successor, and a resolution for the filling of the vacancy before the expiration of that delay is premature and void.

Any ratepayer who is a municipal elector has the right to maintain an action to obtain a declaration of the nullity of the resolution.

Bilodeau v. St. Lazare (1916), Q.R. 50 S.C. 37.

Proceedings, if disqualified member fails to resign.

153. Except in the cases provided for by section 152, if a member of a council forfeits his seat or his right to it or becomes disqualified to hold it and does not forthwith resign his seat, proceedings may be taken under sections 160 to 179 to declare it vacant. 3-4 Geo. V. c. 43, s. 153.

The fact that a municipal councillor has entered into a contract with the corporation does not *ipso facto* cause a forfeiture of his seat. It must first be declared vacant in the manner provided by art. 207 of the Municipal Code, and until that is done a writ of *quo warranto* against him does not lie: Damon v. Lamy (1913), Q.R. 44 S.C. 489.

A statutory provision that every member of a municipal council who "authorizes any expenditure of money exceeding the amount previously voted and legally placed at the disposal of the council or any committee" shall incur the penalty of being personally liable for the expenditure and be disqualified as a member of the council and for re-election as alderman for two years thereafter, is not contravened by members of the council who constitute its finance committee acting under the instructions of the council authorizing the expenditure required to defray the cost of the municipality's representation at the Paris *fetes* by its mayor if, when the provision is made to defray the cost, the appropriation prescribed had been duly voted and the required funds were available and legally at the disposal of the corporation: Lapointe v. Larin, L.R. (1911) A.C. 520, reversing (1909) 42 S.C.R.

521, which had reversed (1909) Q.R. 19 K.B. 146, which had reversed a decision of the Court of Review (1909), Q.R. 36 S.C. 249.

A member of a council who procures the purchase of something necessary for an official of the corporation, informing him that, if the corporation will not pay for it. he himself will do so, does not incur the forfeiture of his membership under a statutory provision which provides for the forfeiture where a member of the council authorizes an illegal expenditure: Masse v. Ekers (1909), Q.R. 35 S.C. 424.

See s. 302 as to disqualification for misapplication of sinking fund.

Resignation of member with consent of council.

154. A member of a council, with the consent of the majority of the members present at a meeting, entered upon the minutes of it, may resign his office and his seat in the council. 3-4 Geo. V. c. 43, s. 154.

See London S.R. Co. v. City of London (1903-4) 9 O.L.R. 439, 443 as to what is a sufficient resignation and consent.

A resolution purporting to reinstate a member of the council who has resigned is *ultra vires*.

The seat becomes vacant upon receipt of the resignation by the secretary-treasurer.

In re Heaslip and Alameda (1909), 11 W.L.R. 718 (Sask.).

Resignation of warden.

155.—(1) The warden of a county may resign his office either by verbal intimation to the county council when in session or by letter to the clerk when the council is not in session.

Vacancy in office of warden—how filled.

(2) Where from any cause a vacancy occurs in the office of warden when the council is not in session, the clerk shall forthwith notify the members of the vacancy, and if required in writing so to do by a majority of them, he shall call a special meeting of the council to fill the vacancy. 3-4 Geo. V. c. 43, s. 155.

When new election to be held. See Banks v. Letherby, 17 O.L.R. 304.

156.—(1) Subject to sections 157 and 158, a new election shall be forthwith held where—

(*a*) A person elected has neglected or refused to accept office or to make the prescribed declarations within the prescribed time; or—

It has been held that a mere delay in making the prescribed declaration, for the purpose of obtaining legal advice as to the qualification of the person elected, was not a refusal to qualify within the meaning of 22 Vict. c. 99, s. 122, the language of which is similar to that of this clause: In re Asphodel and Sargant and others (1859), 17 U.C.R. 593.

It was said by Lord Denman, C.J., in Rex v. Burrell (1840), 12 Ad. & E. 460, 467, dealing with a similar question, that "inability or superior force may excuse the non-performance of a duty by one who is willing to do it."

It was said by Riddell, J., in Rex ex rel. Morton v. Roberts, and Rex ex rel. Morton v. Rymal (1912), 26 O.L.R. 263, 275, 4 D.L.R. 278, 22 O.W.R. 50, "From very early times the refusal to make the declaration (*i.e.*, of qualification) was held equivalent to a refusal of the office even if the party was incapable of making it," citing Attorney-General v. Reid (1678), 2 Mod. 299; Starr v. Mayor, etc., of Exeter (1683), 3 Lev. 116, affirming S.C. 2 Show. 158; Rex v. Larwood (1693), Carthew 306.

This statement must be read in connection with what is said in the preceding notes.

In the same case the respondents were permitted to make the declaration within ten days.

(*b*) A vacancy, except in the office of controller, occurs from any cause.

S. 212 (2) provides for filling a vacancy in the office of controller.

Warrant for new election.

(2) Where a new election is to be held the head of the council, or if he is absent or unable to act or there is a vacancy in the office, the clerk, or if they are both absent or unable to act or both offices are vacant, one of the members of the council shall forthwith issue a warrant under his hand for the holding of the new election.

The issue of the **"warrant"** is essential; if none is issued, the election will be set aside. The curative provision of s. 150 does not help: Rex ex rel. Bawkes v. Letherby (1908), 17 O.L.R. 304.

Where the law provides that in the case of vacancies in a municipal council the mayor is to fix the dates for nomination and for election where there is a contest, a resolution of the council fixing them is void, but, though void, if it is signed by the mayor and carried out without objection by him, it is deemed to be ratified by him and equivalent to his order fixing the dates: Perreault v. Levis (1906), Q.R. 30 S.C. 537.

As there was a *bonâ fide* dispute on a doubtful legal question as to the seat being vacated, the clerk was right in not assuming to determine it by issuing a writ for a new election: Sexsmith v. Montgomery (1893) 9 Man. L.R. 173.

Where a municipal councillor fails to pay his taxes when and as they become due his seat becomes *ipso facto* vacated and an order for a new election must be issued.

Barrette v. Gareau (1915) Q.R. 49 S.C. 173.

Returning and deputy returning officers—nomination and polling.

(3) The returning officer and the deputy returning officers appointed to hold the next preceding election shall be the returning officer and the deputy returning officers to hold the new election, and the nomination shall be held and the polling shall take place at the respective places at which the nomination was held and the polling took place at such last election, unless the council appoints other persons to hold the election and other places at which the nomination shall be held and the polling take place, which the council may do.

Procedure where new election before first meeting of council.

(4) Where a new election becomes necessary before the first meeting of the council in the year for which it is elected the duties which by subsection 2 are to be performed by the head, clerk, or a member of the council shall be performed by the head, clerk, or a member of the council of the next preceding year.

Time for holding election.

(5) The new election shall be held at the latest within fifteen days after the receipt of the warrant by the person to whom it is directed, and the person issuing the warrant shall appoint a time for the nomination of candidates and for the polling if a poll is required, and the election shall be conducted in like manner as an annual election.

The statutory requirement of the municipal ordinance, C.O. (1898) c. 70, s. 21, that at least six days' notice of the holding of a special election (*i.e.*, a by-election) shall be given is not directory but imperative, and an election held without giving the prescribed notice is invalid: Rex ex rel. Hogan v. Jollinette (1912), 4 A.L.R. 233, 4 D.L.R. 697, 20 W.L.R. 364, 1 W.W.R. 829.

Term of office of members elected.

(6) The person elected shall hold office for the residue of the term for which the person whose place he is elected to fill was elected.

(7) Notwithstanding that a new election becomes necessary meetings of the council may be held if a majority of the full number of the council is present. 3-4 Geo. V. c. 43, s. 156.

Majority of council may hold first meeting.

157.—(1) Where a vacancy occurs in the office of alderman in a city where aldermen are elected by general vote, the unsuccessful candidate who received the highest number of votes at the next preceding election shall be entitled to the office upon making the prescribed declarations within the prescribed time, and if he fails to do so or disclaims the office one of the candidates following in regular order according to the number of votes received shall, as hereinafter provided, become entitled to the office on making such declarations within the prescribed time.

Vacancies in office of alderman in cities where election is by general vote.

(2) Where the number of votes cast for two or more of such candidates is equal, their order of succession shall be determined by the amounts for which they are respectively rated upon the last revised assessment roll, the candidate having the largest assessment having the priority.

Candidate having largest assessment to have priority in case of a tie.

(3) The clerk shall immediately after the vacancy occurs give notice in writing to the candidate who is first in succession that he is entitled to such vacant office if he makes the prescribed declarations within one week after the giving of the notice, and that if he fails to make the declarations within that time he shall be deemed to have disclaimed the office.

Notice of vacancy.

(4) If a candidate fails to make the prescribed declarations within the prescribed time, or disclaims the office, the clerk shall forthwith give notice in writing to the candidate next in succession in the same terms as the notice to the first candidate, until the vacant office has been filled or the list of candidates entitled to take it is exhausted.

Failure to take prescribed declarations.

(5) The notice may be served personally or may be sent by registered letter addressed to the candidate, and a record of the

Service of notice on candidate.

service or of the mailing and of the address shall be preserved by the clerk.

When council to elect person to fill vacancy.

(6) If all the aldermen were elected by acclamation, or if no candidate takes the vacant office under the preceding provisions of this section, the council shall forthwith elect a person to fill the vacancy for the remainder of the term of the member whose seat has become vacant. 3-4 Geo. V. c. 43, s. 157.

"Within one week after the giving of the notice."—When the notice is given by registered letter, the notice is served when it is deposited in the post office: Halsbury's Laws of England, vol. 7, par. 728.

The day of the giving of the notice is to be excluded and the seventh day after (unless a holiday) is the last day for making the declaration.

If the seventh day is a holiday, the last day for making the declaration is the day next following which is not a holiday: The Interpretation Act, R.S.O. c. 1, s. 28, cl. (h).

In Rex ex rel. Martin v. Jacques (1913), 4 O.W.N. 1112, 10 D.L.R. 761, 24 O.W.R. 457, it was held that s. 215 *a* of 3 Edw. VII. c. 19, with which this section corresponds, did not apply to a vacancy created by the unseating of a water commissioner of the city of Windsor, but that the vacancy must be filled as provided by s. 233 of 3 Edw. VII. c. 19, which corresponds with s. 174 of the present Act.

By a special Act relating to the Windsor Waterworks, it was provided that in the case of a vacancy occurring in the office of water commissioner during the term of his office, the vacancy should be filled in the same manner as provided by the Act in force respecting municipal institutions at the time of the vacancy, as to vacancies in the council of a city.

The ground of the decision was that s. 215 *a* applied only where the aldermen of a city are elected by general vote and that, as in Windsor, the aldermen were not elected by general vote, that section did not apply.

A resignation from the office of councillor does not operate as a disclaimer so as to vest the office in the person who received the next highest number of votes: Rex ex rel. Hogan v. Jollinette (1912), 4 A.L.R. 233, 4 D.L.R. 697, 20 W.L.R. 364, 1 W.W.R. 829.

By the legislation under consideration in that case (municipal ordinance C.O. 1898, c. 70, s. 70) a disclaimer operates as a resignation, and the candidate having the next highest number of votes becomes the councillor.

Vacancy in office of mayor of city after July 1st.

158.—(1) Where the office of mayor of a city becomes vacant after the first day of July in any year and an election to fill the vacancy has not been ordered in a judicial proceeding, the council shall elect one of their number to fill the office for the remainder of the term.

In office of mayor, reeve and deputy reeve in towns and villages.

(2) Where the office of mayor, reeve or deputy reeve of a town or of reeve or deputy reeve of a village or township becomes vacant after the first day of November in any year, and an election to fill the vacancy has not been ordered in a judicial proceeding, the council may elect one of its number to fill the office for the remainder of the term.

When vacancy need not be filled.

(3) Where a vacancy occurs in the office of alderman where aldermen are not elected by general vote or of councillor after the first day of November in any year and an election has not been ordered in a judicial proceeding it shall not be necessary that the vacancy be filled if the council so directs. 3-4 Geo. V. c. 43, s. 158.

"Has not been ordered in a judicial proceeding," *e.g.*, under s. 174 (2).

Case where electors fail to elect requisite number of members.

159. Where the electors do not elect the requisite number of members, the members elected if they equal at least one-half of the council when complete or a majority of them or if half of such members were not elected the members for the next preceding year or a majority of them shall elect as many qualified persons as are necessary to constitute or complete the requisite number of members. 3-4 Geo. V. c. 43, s. 159.

See notes to s. 70.

PART IV.

PROCEEDINGS TO DECLARE SEAT VACANT.

Procedure.

Interpretation.

160. In this Part,—

"Judge."

(*a*) "Judge" unless the Court is referred to by name shall include a Judge of the Supreme Court and a Judge of a County or District Court;

"Master in Chambers."

(*b*) "Master in Chambers" shall include any officer having jurisdiction to sit and act for the Master in Chambers. 3-4 Geo. V. c. 43, s. 160.

During the long vacation (1st July to 1st September), the Master in Ordinary and the Registrars or the Master in Chambers have this jurisdiction: Con. Rule 181.

In case of the absence or illness of the Master in Chambers or of the office being vacant, his duties may be performed by such other officer as may be designated for that purpose by the Chief Justice of Ontario: Con. Rule 760.

Who may try validity of election or right to deputy reeve.

161.—(1) The validity of the election of a member of a council or his right to hold his seat, or the right of a local municipality to a deputy reeve, may be tried and determined by a Judge of the Supreme Court, by the Master in Chambers, or by a Judge of the County or District Court of the county or district in which the municipality is situate. 3-4 Geo. V. c. 43, s. 161 (1).

Relator—where right to deputy reeve contested.

(2) Where the right of a municipality to a deputy reeve is contested any municipal elector in the county or where the validity of the election is contested, any candidate at the election or an elector who gave or tendered his vote at it, or where the election was by acclamation, or the right to sit is contested on the ground that the member has become disqualified or has forfeited his seat since his election, an elector entitled to vote at the election may be the relator. 3-4 Geo. V. c. 43, s. 161 (2); 4 Geo. V. c. 33, s. 5.

"Member of a council."—See s. 2, cl. (h).

In In re Rex ex rel Snider v. Richardson (1904) 3 O.W.R. 276, it was held that there was no jurisdiction under s. 219 of 3 Edw. VII, ch. 19 to try the validity of the election of a controller of the City of Toronto.

This case has no application now. "Member of a council" includes a member of a board of control. (s. 2 *cl.* (*i*)).

"Has become disqualified or has forfeited his seat since his election."—See ss. 152-3.

Where the election is attacked on the ground that persons declared to be elected were not duly elected, because they had failed to make the prescribed declarations, proceedings to unseat them are properly taken under this section: Rex ex rel. Morton v. Roberts, Rex ex rel. Morton v. Rymal (1912), 26 O.L.R. 263, 273, 4 D.L.R. 278, 22 O.W.R. 50.

Where a member of a council who had resigned his seat, in writing, in pursuance of the statute, afterwards attended a meeting of the council, took part in the proceedings and voted on a motion to amend the minutes of the previous meeting and declaring "that the council accepted the withdrawal of his resignation," and declared the motion carried by his casting vote, the remedy for declaring the seat vacant is by petition: Sexsmith v. Montgomery (1893), 9 Man. L.R. 173.

Quo warranto is the proper remedy for a disqualification continuing after the election: Rex v. Mack (1907), 41 N.S. 128, 2 E.L.R. 263.

Time within which proceedings to be instituted and security and proof required.

162.—(1) If within six weeks after an election, or one month after the acceptance of office by a member of a council a person entitled to be a relator shows by affidavit reasonable ground for supposing that the election was not legal, or was not conducted according to law, or that the person declared elected was not duly elected, or for contesting the validity of the election, or if within six weeks after the facts come to the knowledge of a person entitled to be a relator he shows by affidavit reasonable ground for supposing that a member of a council has forfeited his seat or become disqualified since his election, the Judge or the Master in Chambers, as the case may be, shall give his fiat, authorizing the relator, upon entering into a recognizance as hereinafter provided, and the same being allowed as sufficient, to serve a notice of motion to determine the matter.

"Within six weeks after the facts come to the knowledge of a person entitled."—These words were substituted for the words "at any time" in s. 220 of 3 Edw. VII. c. 19, as enacted by 7 Edw. VII. c. 40, s. 5.

See notes to s. 53 (1), cl. (j)., as to computation of time.

The prescription enacted by art. 708 of the Municipal Code does not apply to actions in the Superior Court, but only to proceedings taken under the code: Beauregard v. Roxton Falls (1903), Q.R. 24 S.C. 474.

A contestation of a municipal election because of corruption or undue influence must be made within the delay of thirty days, but if the contestation is because the occupant of the office does not possess some required qualification or is tainted by some absolute and permanent disqualification, although proceedings to contest the election might be taken within that delay, if the delay has elapsed without contestation and the lack of qualification continues or the disqualification exists proceedings by *quo warranto* may be taken.

And in the latter case the incapacity must exist at the time the writ issues in order that the Court may declare the occupant of the office an usurper.

Barrette v. Gareau (1915) Q.R. 49 S.C. 173.

The twenty-one days within which a petition must be presented began to run when the act complained of was done: Sexsmith v. Montgomery (supra).

The entering into, the allowance and the filing of a recognizance is a condition precedent to the entertaining of a motion to quash a municipal by-law: In re Burton and Arthur (1894), 16 P.R. 160.

A bond, even though allowed by a County Court Judge, cannot be effectively substituted for the recognizance: In re Burton and Arthur (1894), 16 P.R. 160.

A recognizance entered into before a person who has no authority to take it is invalid: Nicholls v. Rawding, (1908), 43 N.S. 192, 6 E.L.R. 41.

A petitioner who has filed an insufficient recognizance may substitute for it cash security after the time for giving security has elapsed: Nicholls v. Rawding (supra).

Where the delay for putting in security has lapsed, the Court has no power to allow an amendment of an insufficient bond or the substitution of another for it: St. Denis v. Mercier (1906), 8 Que. P.R. 20.

The Court has no power to allow a petitioner who has not given sufficient security to put in a different bond and the petition received without a sufficient bond must be declared null and void: Rousseau v. Pelletier (1908), Q.R. 33 S.C. 355.

It is sufficient for an objection against an election to indicate the grounds on which the election is attacked, and the objection will not be dismissed merely because the particular facts on which the petitioner intends to rely are not set out in detail, but, if the defendant demands these details, the petitioner must supply them: Germain v. Hurteau (1899), Q.R. 15 S.C. 614.

In a petition to void a municipal election under the charter of the city of Montreal, 62 Vict. c. 58 (Q.), it is not sufficient for the purpose of obtaining a review of the decision of the Judge upon a recount to allege generally that ballots cast in favour of a candidate have been improperly rejected by the deputy returning officers and by the Judge, while irregular ballots cast in favour of the candidate elected have been admitted, and that the effect has been to change the result of the election; the petition must point out the irregularities complained of and give the number of ballots irregularly admitted: Reneault v. Gagnon (1900), Q.R. 17 S.C. 515.

An amendment cannot be allowed after the expiration of the time limited for the service of a contestation: Brisson v. Pelletier (1903), 5 Que. P.R. 295.

After the expiration of the delay for contesting a municipal election, the seat of a councillor cannot be declared vacant by means of writ of *quo warranto* where want of qualification not actually existing at the time the writ issued is the ground of the proceeding, even though the non-qualification had existed at the time of the election which the relator may have had good grounds for contesting before a proper Court under the provisions of arts. 346 *et seq.* of the Municipal Code: Allard v. Charlebois (1898), Q.R. 14 S.C. 310.

When a municipal councillor proceeded against by *quo warranto* on the ground that while councillor and mayor he had contracts with the corporation and received money thereon, has controlled the proceedings against him and paid the costs before entry of them in Court, and resigned his seat and his resignation was accepted by the council and his seat declared vacant and the contract cancelled, the disability for which he could be attacked disappeared, the law not fixing any limit of time during which he would remain disqualified. After these formalities were completed he was again eligible to be a councillor and could be nominated by the council, and a second writ of *quo warranto* issued against him, the application for it setting up the reasons above mentioned and in addition charging fraud and connivance between the other members of the council and him, was dismissed, especially as the alleged fraud and connivance did not exist.

Landry v. Judd (1897) Q.R. 14 S.C. 188.

A petition invoking reasons against the validity of an alderman's claim to hold a seat in the council and asking that he be ousted and his seat given to the petitioner and the city clerk ordered to proclaim him elected, is a contestation of the election, and the deposit of $200 required by 58 Vict. c. 49 as security for the costs of the contestation must be made: Roy v. Martineau (1902), Q.R. 22 S.C. 1.

STATUS OF RELATOR.

In Rex ex rel. Froehlich v. Woeller (1912), 3 O.W.N. 838, 3 D.L.R. 281, 21 O.W.R. 672, the motion was dismissed. Three objections were held to be well taken: (1) That the recognizance was not filed; (2) that the application was too late, declaration of office and acceptance 8th January, application 28th February; (3) allegation that respondent not a British subject made only on information and belief.

A relator is precluded from attacking an election where he had acquiesced in what he complains of or was himself guilty of acts similar to those of which he complains: Rex ex rel. Tolmie v. Campbell (1902), 4 O.L.R. 25, 28; Rex ex rel. McLeod v. Bathurst (1903), 5 O.L.R. 573; Rex ex rel. Payne v. Chew (1905), 5 O.W.R. 389, 391; 41 C.L.J. 405; In re Quigley (1911), 24 O.L.R. 622, 642. See also Carr v. North Bay (1913), 28 O.L.R. 623, 626, 13 D.L.R. 458.

It was held in Demers v. Hebert (1912) Q.R. 42, S.C. 314, 8 D.L.R. 632, that where a mayor, who was duly qualified at the time of his election, afterwards ceases to possess the necessary property qualification, the procedure provided for by article 3 of The Cities and Towns Act, 3 Edw. VII. c. 38, must be followed. It provides that, in case the mayor has ceded or in any manner made over the property upon which he is qualified or has mortgaged or encumbered the same so as to affect the amount required for his qualification, any two duly qualified electors may present a petition to the council requiring the mayor to produce his title as proprietor of such other immovable property as he may qualify upon, together with a sworn declaration establishing the value of it, and, in default of his so doing within a delay of thirty days, his seat *ipso facto* becomes vacant.

A person guilty of bribery at a municipal election is not thereby disqualified from acting as a relator in a proceeding to set aside the election of the successful candidate: Rex ex rel. Sabourin v. Berthiaume (1913), 11 D.L.R. 68, 4 O.W.N. 1201, 24 O.W.R. 559.

An application for leave to exhibit an information by way of *quo warranto* to unseat a person as school trustee should be dismissed if the relator is a person not really interested in the matter complained of, but merely put forward as a nominal relator by the real prosecutor because of the latter's want of qualification to be a relator: Rex ex rel. Tuttle v. Quesnel (1909), 19 Man. L.R. 23, 10 W.L.R. 722, 11 W.L.R. 96.

A person who participated in the election of a councillor and himself proposed him for election, knowing at the time that he had not the qualification required by law, cannot afterwards complain of his want of qualification: Lemire v. Neault, Lemire v. McClay, Lemire v. Turcotte (1898), Q.R. 15 S.C. 33.

A ratepayer who is nominated as a candidate at a municipal election may contest the election of the other candidate, notwithstanding that he himself is disqualified from being a candidate: Tetreau v. Beaudry (1904), 6 Que. P.R. 156.

One who has not paid his school taxes cannot, under art. 4227, R.S.Q., be nominated for the position of municipal councillor and is not qualified to petition against the result of the election: Latour v. Lefebvre (1909), 10 Que. P.R. 336.

A male person of the age of twenty-one years and not otherwise taxed, residing in a municipality, though neither a house owner nor tenant, being liable to a personal tax not exceeding one dollar, is "a person interested" within the meaning of art. 987, C.P.Q., and entitled to have recourse to a writ of *quo warranto* against one who unlawfully holds the position of municipal councillor: Prevost v. Parent (1911), Q.R. 40 S.C. 146.

A person who with knowledge of an irregularity at an election (in this case the rejection of a ballot paper) concurs in it, will not be heard as relator in a proceeding to set aside the election on the ground of the irregularity: Rex ex rel. Park v. Street (1905), 1 W.L.R. 202 (Sask.).

The consent of the relator to violations of the law with regard to the holding of an election cannot validate the election: Rex ex rel. Gunder Bjorge v. Zellickson (1910), 13 W.L.R. 433 (Sask.).

DEATH OF RELATOR.

If the relator dies pending the proceedings they cannot be revived: per Cartwright, M.C., Rex ex rel. Warner v. Skelton (1911), 3 O.W.N. 175-6.

Recognizance.

(2) The recognizance shall be entered into before the Judge or Master in Chambers granting the fiat or before a commissioner for taking affidavits, by the relator in the sum of $200 and by two sureties, to be allowed as sufficient by the Judge or Master in Chambers upon affidavit of justification, each in the sum of $100; and shall be conditioned to prosecute the motion with effect and to pay to the person against whom it is made any costs which may be adjudged to him against the relator.

Where a Judge of a County Court has given his fiat and has refused to set it aside, an appeal from his refusal does not lie to a Divisional Court: Rex ex rel. Boyce v. Porter and Rex ex rel. Boyce v. Ellis (1915), 33 O.L.R. 575, 24 D.L.R. 118.

It had been previously held that, where the Judge of the County Court had set aside his fiat and the proceedings based upon it, his order was not appealable: Rex ex rel. McFarlane v. Coulter (1902), 4 O.L.R. 520. Street, J., who so decided, said that he expressed no opinion as to the power of the County Court Judge to make the order.

Article 5551 of the Revised Statutes of Quebec, 1909, which gives the right to review the judgment rendered on the petition to set aside a municipal election, does not authorize the review of interlocutory judgments pronounced on the petition: Labadie v. Ringuet (1913), Q.R. 43 S.C. 374.

Allowance of recognizance.

(3) When the recognizance has been allowed as sufficient, the Judge or Master in Chambers by whom it is allowed shall note upon it and upon the fiat allowing service of the notice of motion, the words "*Recognizance allowed*" and shall initial the same.

Failure to make this note, where the recognizance has in fact been allowed, is immaterial. The note may be made at any time: Rex ex rel. Walton v. Freeborn (1901), 2 O.L.R. 165-6.

Proceedings—how to be entitled

(4) Where the proceedings are taken before a Judge of the Supreme Court or before the Master in Chambers they shall be entitled in the Supreme Court; and where they are taken before a Judge of a County or District Court they shall be entitled in that Court. 3-4 Geo. V. c. 43, s. 162.

Contents of notice of motion.

163. The relator in his notice of motion shall set forth his name in full, his occupation and place of residence, and the interest which he has in the election, whether as candidate or as an elector, and shall state specifically under distinct heads all the grounds of objection to the validity of the election complained of, and in favour of the validity of the election of himself or of any other person, where the relator claims that he or that such person was duly elected, or the grounds of forfeiture or disqualification, as the case may be. 3-4 Geo. V. c. 43, s. 163.

See notes to s. 174.

Where the notice of motion did not describe the objection (disqualification by having a contract for the supply of goods or materials, etc.) aptly or in the language of the statute, 3 Edw. VII. c. 19, s. 80 (1), the notice was allowed to be amended: Rex ex rel. Slater v. Homan (1911), 2 O.W.N. 1334.

In Rex ex rel. Morton v. Roberts and Rex ex rel. Morton v. Rymal (1912), 26 O.L.R. 263, 4 D.L.R. 278, 22 O.W.R. 50, Riddell, J., allowed the notice of motion to be amended by setting up the omission to make the statutory declaration required by s. 311 of 3 Edw. VII. c. 19. He did this for the reason that, as he held, the corresponding section to section 163 did not apply, because the relator did not object to the validity of the election and made no claim for the election of some one else: p. 274. Owing to an error in the consolidation, instead of the word "or" in the last line but one of the section as it now reads, there was the word "on." In the consolidation of 1913, 3 & 4 Geo. V. c. 43, the mistake was corrected (s. 163), and it seems clear that this decision, except in so far as it depended on section 168, then 3 Edw. VII. c. 19, s. 226, is no longer law.

The practice in the Territories providing for the issue of a writ of mandamus in the nature of a *quo warranto* differs from that in England. There the question raised is the right of the respondent to use and exercise the office. In the Territories what has to be decided is whether there was an election, and, if so, was the respondent elected, and, if he was elected, whether his election was valid. It is, therefore, not necessary in proceedings that the material should show that the respondent has accepted the office or the term for which he was elected: Rex ex rel. Park v. Street (1905), 6 Terr. L.R. 137, 1 W.L.R. 87.

Affidavits, etc., to be filed.

164. Before serving the notice of motion, the relator shall file all the affidavits and material upon which he intends to move, except where oral evidence is to be taken, and in that case he shall name in the notice the witnesses whom he proposes to examine. 3-4 Geo. V. c. 43, s. 164.

It was held in Rex ex rel. Beck v. Sharp (1908), 16 O.L.R. 267, that there was no right under 3 Edw. VII. c. 19 to cross-examine on affidavits without special leave, and that the Rules of Court as to such a cross-examination did not apply.

This case is no longer law, because by section 185 it is enacted that, in cases not provided for by Part IV. or by Rules of Court made under that section, "the practice and procedure of the Supreme Court shall be applicable."

See also Rex ex rel. Ponsford v. Roberts (1902), 3 O.L.R. 410, 414-5; Rex ex rel. Ivison v. Irwin (1902), 4 O.L.R. 192.

No witness can be examined unless his name is mentioned in the notice of motion: Rex ex rel. Sabourin v. Berthiaume (1913), 11 D.L.R. 68, 4 O.W.N. 1201, 24 O.W.R. 559.

Service of notice of motion.

165. The notice of motion shall be served within two weeks from the date of the fiat, unless upon a motion to allow substituted service the Judge or Master in Chambers otherwise orders, and not less than seven clear days before the day on which the motion is returnable, and shall be served personally, unless the person to be served avoids personal service, in which case an order may be made for substituted service. 3-4 Geo. V. c. 43, s. 165.

"Two weeks."—See s. 53 (1), cl. (j).

"Seven clear days."—Ib.

A notice for "Tuesday the 24th day of February," Tuesday being the 25th, is a good notice for that day: Rex ex rel. Ponsford v. Roberts (1902), 3 O.L.R. 410.

Where service is defective, the defect will be waived by the respondent appearing and taking part in the trial of the merits: Cameron v. Beaton (1915), 48 N.S. 353, 21 D.L.R. 386.

Where it is made to appear that prompt personal service cannot be effected, an order for substitutional service may be made: McLellan v. McIsaac (1915), 48 N.S. 299, 21 D.L.R. 429.

Where relator claims that he or another was elected.

166. Where the relator alleges that he or some other person was duly elected, the motion shall be to try the validity of the election complained of and of the alleged election of the relator or other person. 3-4 Geo. V. c. 43, s. 166.

One motion against several persons.

167. Where the grounds of objection apply to two or more persons elected or sitting as members of a council, the relator may proceed by one motion against all of them. 3-4 Geo. V. c. 43, s. 167.

This section applies only where the "grounds of objection"—that is, all the grounds set out in the notice—"apply equally to two or more persons elected": Rex ex rel. Warner v. Skelton (1911), 23 O.L.R. 182, 185.

Prior to this case the decisions were conflicting. In Reg. ex rel. Burnham v. Hagerman (1900), 31 O.R. 636, Street, J., had interpreted the section as it was interpreted by Middleton, J., in Rex ex rel. Warner v. Skelton, but the Chancellor had come to a different conclusion in Reg. ex rel. St. Louis v. Reaume (1895), 26 O.R. 460.

The view of Street, J., and Middleton, J., appears to be the better one.

Hearing of motion.

168. On the hearing of the motion the relator shall not be allowed to object to the election of the person complained of or to support the election of himself or of any person alleged to have been duly elected or to attack the right of any member to sit on any ground not specified in the notice of motion; but the Judge or the Master in Chambers may entertain any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in evidence before him. 3-4 Geo. V. c. 43, s. 168.

See note to s. 165.

169. Where more motions than one are made to try the validity of the election, or the right to sit of the same person, all of them shall be made returnable, and unless otherwise directed by a Judge of the Supreme Court, shall be heard and determined by the Judge or Master in Chambers before whom the motion, notice of which was first served, is returnable, and one order upon all, or a separate order upon one or more of them may be made, as he may deem proper. 3-4 Geo. V. c. 43, s. 169.

Who to hear motions when more than one.

Inasmuch as a County Court Judge has equal and concurrent jurisdiction in respect of proceedings under this section with the other named officials, a Judge of the Supreme Court sitting in Chambers cannot prohibit him from proceeding with the trial.

In this case two motions by different relators to try the validity of the same election were made returnable, the first of them before the Master-in-Chambers and the other before the County Court Judge.

In re Reg. ex rel. Hall v. Gowanlock (1898), 29 O.R. 435.

170. The Judge or Master in Chambers may require the clerk of any municipality to produce before him or to forward under seal to the clerk of the county or district court for the purpose of production, such assessment rolls, collector's rolls, ballot papers, books, voters' and other lists, and other records of the election and papers in his hands connected with or relating to it as the Judge or Master in Chambers may deem proper. 3-4 Geo. V. c. 43, s. 170.

Requiring clerk to attend with rolls, voters' lists, etc.

171. Where the motion is returnable before a Judge of the Supreme Court he may direct that the evidence to be used on the hearing of the motion be taken orally in the presence of counsel for or after notice to all parties interested before a special examiner or a Judge of a County or District Court, who shall return the evidence so taken to the proper officer of the Supreme Court. 3-4 Geo. V. c. 43, s. 171.

Taking of evidence to be used on motion.

172.—(1) The Judge or Master in Chambers, at any stage of the proceedings, may—

Returning officer, etc., may be made a party.

(*a*) Add the returning officer or any deputy returning officer or other person as a party to the proceedings.

Person entitled to be a relator may prosecute or defend.

(*b*) Allow any person entitled to be a relator to intervene and prosecute, or to defend, and may grant a reasonable time for that purpose.

Costs.

(2) An intervening party shall be liable for or entitled to costs like any other party to the proceedings. 3-4 Geo. V. c. 43, s. 172.

It had been held that there was no power to compel a relator to go on if he desires to withdraw and no power to substitute a new relator: Reg. ex rel. Matson v. Butler (1897), 17 P.R. 382.

The language of the section then in force, s. 196 of 55 Vict. c. 42, was "to intervene and defend." The change to the present form was made in the revision of 1897, in which the section is 231 of c. 223, though, oddly enough, in 60 Vict. c. 15, which contains the amendments made with a view to the revision, s. 196, was amended so as to read "to intervene and prosecute" (Schedule C (49)), and it is probable that the change to the present form was made by the Commissioners under the authority of 60 Vict. c. 3, s. 3.

Unless it is otherwise provided by law, an elector may intervene in a contestation of an election where it is alleged that the plaintiff has manifested the intention of abandoning the proceedings, and he may do so notwithstanding that by reason of the delay elapsed since the election he would be precluded from instituting direct proceedings to contest the election: Moreau v. Lamarche (1900), 3 Que. P.R. 301.

The lapse of the delay allowed for contesting a municipal election will not prevent a qualified person from intervening in a proceeding instituted in due time for the purpose of continuing it if the plaintiff fails to do so: Larin v. Nault (1907), 8 Que. P.R. 205.

An elector has no right to intervene in the contestation of a municipal election merely to watch the proceedings and continue them in case the petitioner should abandon them: Charpentier v. Hebert (1915), Q.R. 48 S.C. 13.

Mode of trial.

173.—(1) The Judge or Master in Chambers shall, in a summary manner, without formal pleadings, hear and determine the questions raised by or upon the motion, and, subject to subsection 2, may inquire into the facts on affidavit, by oral testimony, or by an issue framed by him and sent to be tried by a jury in any Court named by him, or by one or more of those means.

It is not necessary that the evidence should be read over and signed by the witnesses: Rex ex rel. Sabourin v. Berthiaume (1913), 11 D.L.R. 68, 4 O.W.N. 1201, 24 O.W.R. 559.

Evidence of corrupt practice to be taken orally.

(2) Where a question is raised as to whether the candidate or any voter has been guilty of any violation of sections 187 to 189, affidavit evidence shall not be used to prove the offence, but it shall be proved by oral evidence taken before the Judge or before a special examiner or a Judge of a County or District Court, upon an order of reference to him for that purpose by the Judge of the Supreme Court, if the motion is returnable before a Judge of the Supreme Court, or before the Master in Chambers or the Judge of the County or District Court if the motion is returnable before him.

All the evidence, both *pro* and *con* and not merely the evidence adduced by the relator in support of the charge, must be taken *viva voce*, and affidavits in answer to oral evidence cannot be received: Rex ex rel. Carr v. Cuthbert (1901), 1 O.L.R. 211.

It was held that under R.S.O. 1887, c. 184, s. 212, as by Con. Rule 30, the Master in Chambers had "the same jurisdiction in *quo warranto* that a Judge of a High Court sitting in Chambers has," he had power to direct a reference to a County Court Judge to take evidence in the cases to which the section corresponding to this subsection applied (Rex ex rel. Whyte v. McClay (1889), 13 P.R. 96), and the same conclusion was reached under 3 Edw. VII. c. 19, s. 248; Rex ex rel. O'Shea v. Letherby (1908), 16 O.L.R. 582, 587.

These cases are no longer law, owing to changes in Part IV. and especially to the provision of this subsection that the oral evidence is to be taken "before the Master in Chambers or the Judge of the County or District Court if the motion is returnable before him," and to the fact that a reference to take such evidence is provided for only if the motion is returnable before a Judge of the Supreme Court.

Striking off votes.

(3) Where the seat is claimed for any person, if a candidate is proved to have been guilty, himself or by any person on his behalf, of bribery or of a corrupt practice with respect to a voter who voted at the election, or if a voter, who is employed on behalf of such candidate and is disqualified under subsection 1 of sec-

tion 61, is proved to have voted, there shall be struck off the number of votes given for such candidate one vote for every such voter. 3-4 Geo. V. c. 43, s. 173.

Where a candidate by whom the seat is claimed is largely indebted to the corporation, a new election will be ordered: Reg. ex rel. Duncan v. Laughlin, Reg. ex rel. Stevenson v. Blanchard (1885), 2 Man. L.R. 78.

If election invalid, order for removal from office of person unduly elected, etc.

174.—(1) Where the election complained of is adjudged to be invalid, the order shall provide that the person found not to have been duly elected be removed from the office, and if it is determined that any other person was duly elected that he be admitted forthwith to the office.

Order for new election.

(2) Where it is determined that no other person was duly elected, or that a person duly elected has become disqualified or has forfeited his seat, the order shall provide for the removal from office of such last mentioned person and, except as provided by section 157, for the holding of a new election. 3-4 Geo. V. c. 43, s. 174.

A relator is not entitled to the seat where he neither objects to the disqualification of the respondent at the nomination nor gives any notice on election day to the electors that they are throwing away their votes: Rex ex rel. O'Donnell v. Broomfield (1903), 5 O.L.R. 596, and cases there cited.

The seat cannot be awarded to an unsuccessful candidate, though his successful opponent is unseated on the ground that he was not qualified, where no objection was taken to his qualification at the nomination, "so that the electors might have an opportunity of nominating another candidate": Rex ex rel. Robinson v. McCarty (1903), 5 O.L.R. 638, 641-2.

Order for new election to be directed to sheriff.

175. Where the election of all the members of a council is adjudged to be invalid, or where it is determined that all of them have become disqualified or have forfeited their seats, the order for their removal, and for the election of new members in their places or for the admission of others adjudged to be legally elected, and for an election to fill the remaining seats in the council, shall be directed to the clerk of the municipality or where there is no clerk to the sheriff of the county or district in which the municipality is situate, who shall have all the powers for causing the election to be held which a municipal council or any member or officer of it has in order to fill a vacancy in it. 3-4 Geo. V. c. 43, s. 175.

Where election declared invalid owing to refusal to permit qualified persons to vote.

176.—(1) Where an election is adjudged to be invalid owing to the improper refusal of the returning officer or of a deputy returning officer to receive a ballot paper tendered by or to give a ballot paper to an elector, or owing to such officer having put into the ballot box a ballot paper which was not lawfully received from an elector, the Judge or Master in Chambers may order that the costs of the proceedings to unseat the person declared elected, or any part of them, be paid by such returning officer or deputy returning officer.

Right of action against officers preserved.

(2) Nothing in this section shall affect any right of action against the returning officer or deputy returning officer or relieve him from any penalty to which he may be liable under this Act. 3-4 Geo. V. c. 43, s. 176.

Order.

177.—(1) After the adjudication an order shall be drawn up, stating concisely the ground and effect of the decision.

Amendment of order.

(2) The order may be at any time amended by the Judge or Master in Chambers in any matter of form, and shall have the same force and effect as a writ of mandamus formerly had in the like case. 3-4 Geo. V. c. 43, s. 177.

The dismissal of a motion owing to defects in the recognizance is not a baz to another motion being made.

Rex ex rel. Ingoldsby v. Spiers (1909) 13 O.W.R. 611.

Judgment to be returned to proper officer of court.

178. The Judge or Master in Chambers forthwith after rendering his decision shall return the same with all things had before him touching the proceeding, to the proper officer of the Court, there to remain of record as a judgment of the Court; and the judgment may be enforced for the costs awarded by execution and in other respects in the same manner as an order of mandamus. 3-4 Geo. V. c. 43, s. 178.

Appeals from Master in Chambers or County Judge.

179.—(1) The decision of a Judge of the Supreme Court shall be final, but an appeal shall lie from the decision or order of the Master in Chambers or of a Judge of a County or District Court to a Judge of the Supreme Court whose decision shall be final.

One of several co-relators cannot without the sanction of the Court withdraw on the ground that his adhesion to the proceeding was procured by false representations: Gamache v. Blais (1916), Q.R. 50 S.C. 200.

Rex ex rel. Craig v. Ego (1910), 15 W.L.R. 506 (B.C.). An appellant in a *quo warranto* proceeding has no right to withdraw the appeal without the consent of the Court, and consent will not be given where the rights of the property owners and ratepayers of a whole district are affected.

Procedure on appeal.

(2) The practice and procedure on and in relation to the appeal shall be the same, as nearly as may be, as in the case of an appeal from a decision of the Master in Chambers in an action or proceeding in the Supreme Court. 3-4 Geo. V. c. 43, s. 179.

See notes to s. 162.

Disqualification of candidate guilty of corrupt practice.

180. A candidate elected who is found to have been guilty of bribery, or of a corrupt practice, shall forfeit his seat, and shall be ineligible as a candidate at any election for two years thereafter.

Report to be made to clerk.

(2) The Judge or Master in Chambers shall report to the clerk of the municipality in which the offence was committed the name of every candidate who has been so found guilty, and the clerk shall enter his name in a book to be kept for that purpose. 3-4 Geo. V. c. 43, s. 180.

Disclaimer.

Disclaimer before election complained of.

181.—(1) Any person elected may at any time after the election, and before it is complained of, deliver to the clerk of the municipality a disclaimer signed by him, to the effect following:—

> "*I, A.B., hereby disclaim all right to the office of for the of , in the county (or district) of , and all defence of any right I may have to the same.*
>
> *Dated day of* , 19 .
>
> *A.B.*"

3-4 Geo. V. c. 43, s. 181.

It was held in Reg. ex rel. Mitchell v. Davidson (1881), 8 P.R. 434, that a document signed by the person elected and addressed to the mayor and council in these words,

"Gentlemen,—I beg to disclaim my seat at the Council Board,"
was not sufficient and did not relieve him from costs under s. 184 (2).

Notwithstanding s. 215 of The Municipal Act, an election petition should not be filed complaining of the return of a candidate for a municipal office after he has handed in a disclaimer under s. 249 unless the seat is claimed for the petitioner or some other candidate: Paterson v. Brown (1897), 11 Man. L.R. 612.

When defendant may disclaim.

182. A person whose election is complained of, unless it is complained of on the ground of bribery or corrupt practices on his part, or a person whose seat is attacked on the ground that he has become disqualified or has forfeited his seat, may, within one week after service on him of the notice of motion, transmit by registered post, or deliver, if the proceedings are in the Supreme Court, to the Clerk in Chambers, at Osgoode Hall, Toronto, or if the proceedings are in a County or District Court to the Judge of that Court, and to the relator or his solicitor, a disclaimer signed by him to the effect following:—

> "*I, A.B., upon whom a notice of motion, in the nature of a quo warranto has been served for the purpose of contesting my right to the office of for the of , in the county (or district) of , hereby disclaim the said office, and all defence of any right I may have to the same.*
>
> *Dated day of* , 19 .
>
> *A.B.*"

3-4 Geo. V., c. 43, s. 182.

Duplicate of disclaimer to be delivered to clerk.

183. A person disclaiming shall deliver a duplicate of his disclaimer to the clerk of the municipality, and the clerk shall forthwith communicate it to the council. 3-4 Geo. V. c. 43, s. 183.

Disclaimer to operate as resignation.

184.—(1) A disclaimer in accordance with section 181 or 182 shall operate as a resignation.

Costs.

(2) A disclaimer in accordance with section 181 shall relieve the person making it from all liability for costs.

See notes to s. 181.

When costs not to be awarded.

(3) Costs shall not be awarded against a person disclaiming under section 182, unless he consented to his nomination or accepted the office. 3-4 Geo. V. c. 43, s. 184.

Rex ex rel. Mooney v. Robertson (1910), 1 O.W.N. 455.

RULES OF PRACTICE.

Judges to make rules, etc.

185. The Judges of the Supreme Court may make rules regulating the practice and procedure in relation to proceedings under this Part, including the costs of and incidental to them, and as to matters not provided for in it, or by Rules of Court, the practice and procedure of the Supreme Court shall be applicable. 3-4 Geo. V. c. 43, s. 185.

The latter Part of this section is new and makes an important change in the law. The practice and procedure of the Supreme Court will now be applicable except in matters provided for in this part or by rules made under the authority of the first part of the section. Before the change it was otherwise.

See as to this, Rex ex rel. Boyce v. Porter, Rex ex rel. Boyce v. Ellis (1915), 33 O.L.R. 575, 581, 24 D.L.R. 118.

A relator may be required to give security for costs where his proceedings are not in truth taken by him, but he is put forward by others who are the real actors: In re Sturmer (1911), 2 O.W.N. 1053.

Procedure substituted for quo warranto proceedings.

186. Proceedings for the removal from office of a person whose election is alleged to have been undue or illegal, or who is alleged not to have been duly elected, whether or not the seat is claimed by or on behalf of the relator or any other person, and proceedings to have the right of a person to sit in a council determined shall be had and taken under the provisions of this Part and not by *quo warranto* proceedings or by an action in any court. 3-4 Geo. V. c. 43, s. 186.

See also The Judicature Act (R.S.O. c. 56, ss. 146-7-8, 150).

It was held in Rex ex rel. McFarlane v. Balment (1915), 8 W.W.R. 111, that s. 92 of R.S.B.C. 1911, c. 71, does not apply where the election is not contested on any of the grounds mentioned in it, and that the old form of relief by way of *quo warranto* is still open in such a case.

A Court of equity will not upon an injunction bill try the validity of an election of mayor or councillor even though the custody of the books and papers of the Corporation be in question, at all events not unless there are others claiming the right to hold the office: Fairbanks v. Douglas (1887), 5 Man. L.R. 41.

Where there has not been an actual vote, s. 217, cl. (*c*), of The Municipal Act does not apply, and the remedy by *quo warranto* is open to a person who desires to question the return of a candidate who has been declared elected at the nomination meeting: In re St. Vital Municipal Election, Tod v. Mager (1912), 20 W.L.R. 537, 1 W.W.R. 929, affirmed (1912), 22 Man. L.R. 137, 21 W.L.R. 203, 2 W.W.R. 185.

Where a person not properly qualified has been elected and continues to act, the proper procedure for his removal is an information in the nature of a *quo warranto*: In re Mack (1906), 39 N.S. 394, 1 E.L.R. 222.

In Penny v. Brent (1908), 4 E.L.R. 437 (N.S.), Drysdale, J., said that it was open to much doubt whether, where the time for questioning the election under The Municipal Controverted Elections Act has expired, an action is the appropriate proceeding for obtaining a declaration that the election of a member of a council is void, and to vacate the seat and an injunction to restrain the member from being sworn or sitting and voting as a member of the council, and an interim injunction was refused.

A member of a town council, having made an abandonment of his property for the benefit of his creditors, his seat was declared vacant by the council, but at the election to fill the vacancy he was re-elected, and it was held that his right to occupy the seat could not be contested on the ground of his insolvency by way of *quo warranto* without recourse to contestation of the election under arts. 4275 *et seq.*: R.S.Q., Riendeau v. Dudevoir (1897), Q.R. 12 S.C. 273.

A municipal councillor who during his term of office has sold with right of redemption (*vente a remere*) the immovable upon which he qualified for election may be removed from office by writ of *quo warranto*. Such a sale if made under a resolutory condition taking effect from the date of the contract subject to be resileated on the happening of the stipulated event, and it makes no difference that after the issue of the writ the council exercises the right of redemption reserved: Berthiaume v. Pilon (1898), Q.R. 14 S.C. 524.

The qualification of a municipal councillor may be contested by proceedings in *quo warranto* under the provisions of art. 987 *et seq.*, C.C.P., notwithstanding that the cause of disqualification existed at the time of the election.

An objection against an election, which is the remedy under arts. 427 *et seq.* of The Municipal Corporations Act, does not prevent recourse to the writ of *quo warranto.*

Lemire v. Neault, Lemire v. McClay, Lemire v. Turcotte (1898), Q.R. 15 S.C. 33.

The remedy by *quo warranto* under the Code of Procedure is not affected by arts. 4275 *et seq.* of R.S.Q.: Roy v. Martineau (1902), Q.R. 22 S.C. 1.

Quo warranto proceedings under art. 987, C.P., lie to oust a person from the office of mayor on the ground that he can neither read nor write. This incapacity not only makes him ineligible, but disqualifies him from holding the office. It is, therefore, not merely a ground of contestation in the manner and within the delay specially prescribed, but may be urged at all times by the above proceeding, although it existed at the time of the election: Page v. Genois (1908), Q.R. 34 S.C. 541.

The proceedings authorized by section 338 of the Charter of the City of Montreal against aldermen who have voted for the illegal expenditure of money to compel them to reimburse the money and to disqualify them is a special remedy which should be exercised by an ordinary civil action.

Lapointe v. Larin (1909) 10 Que. P.R. 346.

PART V.

BRIBERY AND CORRUPT PRACTICES.

Bribery—who guilty of.

187.—(1) Every person who:—

Bribing voter or procuring bribery by money.

(*a*) Directly or indirectly, himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote, or refrain from voting or corruptly does any such act on account of any voter having voted or refrained from voting at an election; or—

The employment and payment of a scrutineer is not a corrupt practice unless the payment is made for the purpose of influencing his vote: Rex ex rel. Fitzgerald v. Stapleford (1913), 29 O.L.R. 133, 13 D.L.R. 858.

The making by supporters of a local option by-law publicly and to individual voters the statement that the "temperance party" had provided a fund with which they intended, in the event of the by-law being passed, to erect a building to be used as a temperance hotel, and that, in connection with it, there were to be stables free for the use of those desiring that accommodation, and that there would also be, in connection with the hotel, a free reading-room and games, does not constitute bribery: In re Leahy and Lakefield (1906), 8 O.W.R. 743.

By gift or offer or promise of employment.

(*b*) Directly or indirectly, himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place or employment, or promises to procure or to endeavour to procure any office, place or employment to or for any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting or corruptly does any such act on account of any voter having voted or refrained from voting at an election; or

To induce anyone to procure return of candidate or endeavor to procure.

(c) Directly or indirectly, himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement, to or for any person, in order to induce such person to procure or endeavour to procure the return of any candidate, or the vote of any voter at an election; or

Receiving bribe to procure return of candidate.

(d) Upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the return of any candidate, or the vote of any voter at an election; or

Advancing money to be spent in corrupt practices.

(e) Advances or pays, or causes to be paid, money to or to the use of any other person, with the intent that such money or any part of it shall be expended in corrupt practices at an election, or who knowingly pays or causes to be paid money to any person in discharge or repayment of money wholly or in part expended in corrupt practices at an election; or

Applying for money or employment in consideration of voting.

(f) Directly or indirectly, himself or by any other person on his behalf, on account of, and as payment for voting or for having voted, or for illegally agreeing or having agreed to vote for any candidate at an election, or on account of, and as payment for having illegally assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration, or for any office, place or employment, or the promise of any office, place or employment; or

Receiving money, office, etc., for having voted.

(g) Before or during an election, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at an election; or

Receiving money corruptly after election.

(*h*) After an election, directly or indirectly, himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or for having induced any other person to vote or refrain from voting at an election; or

Giving or promising office to induce candidate to stand or withdraw.

(*i*) In order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure, or endeavours to procure any office, place or employment for such person, or for any other person,

Penalty.

shall be guilty of bribery, shall be disqualified from voting at any election for two years, and shall incur a penalty of $200, and shall also be liable to imprisonment for any term not exceeding six months.

This section is new. It was first enacted by 3 and 4 Geo. V. c. 43, and corresponds with the first eight clauses of s. 167 of The Ontario Election Act (R.S.O. c. 8) except as to the penalty.

See notes to s. 284.

Giving on election day by a person standing in close relationship to a candidate drink to a voter who had "changed" from the other candidate three days before the election was held to be sufficient to render the election of the first-mentioned candidate void: Kaulbach v. McKean (1905), 38 N.S. 364.

Payment by a candidate on the day of the election for the dinners of several electors who took their dinner at the same house with him, where the payment was not made in pursuance of any previous intention or arrangement or with the intention of corruptly influencing the voters, is not a payment made on account of the voters having voted or being about to vote and is not a corrupt practice within the meaning of The Municipal Controverted Elections Act, R.S.N.S. 1900, c. 72: Stephen v. Flemming (1908), 42 N.S. 282, 4 E.L.R. 402.

A charge which involves disqualification should be proved beyond reasonable doubt to warrant a finding adverse to the successful candidate: per Russell, J., in Cameron v. Beaton (1915), 48 N.S. 353, 21 D.L.R. 386.

Corrupt practice, treating: McLellan v. McIsaac (1915), 48 N.S. 299, 21 D.L.R. 429.

Promises, gifts, favours or threats, which can influence the electors for votes for a candidate, are fraudulent acts, the effect of which is to avoid the election whatever may be the number of voters which are so corrupted, but votes which are illegal by reason of want of qualification in the electors do not avoid the election if, on such votes being struck out, the candidate still has a majority of the legal votes: L'abbe v. Morin (1903), Q.R. 23 S.C. 407.

Payment of an elector's taxes or his travelling expenses made with the sole intention of qualifying him is not fraudulent; to constitute it a fraudulent device under the common law and the Municipal Code it is necessary that it be made, to corrupt the votes, to induce him to vote for a particular candidate: Laframboise v. Ladouceur (1904), Q.R. 26 S.C. 85.

When a candidate who is disqualified for election withdraws because of his disqualification, the giving and accepting of a sum of money to and by him to defray the expenses incurred by him to the time of his withdrawal is an act of bribery: Masson v. Hebert (1904), Q.R. 27 S.C. 435.

The corruption contemplated by 36 Vict. c. 9, s. 33, as a ground of contestation of an election must amount to that recognized by the common law of England, and not that defined by the federal and provincial laws in Canada. It exists only where, by agreement between the person committing the act of corruption and the elector, the latter, in consideration of some advantage given or promised, agrees to vote in a certain manner. The offer or proposition to give by the one without acceptance by the other does not constitute the offence: Langlois v. Auger (1904), Q.R. 29 S.C. 373.

An isolated act of corruption by a candidate is sufficient to avoid the election. It is otherwise in regard to acts done by third persons for his advantage. Such acts, in order to have the same effect, must by their number amount to general corruption, and render it doubtful that the election was the result of the free and honest vote of the electors, but rather that of the corrupt practices. Ib.

Members of a county council sitting in appeal from a decision of a local council are not bound to observe the dignified conduct of magistrates. They may with propriety conduct themselves in a manner that legislative representatives do in respect of their electors. Therefore the providing at the expense of interested parties a few glasses of liquor and a twenty-five cent dinner is not a sufficient reason for setting aside their decision on the ground of corrupt practices: St. Christophe v. Arthabaska (1906), Q.R. 29 S.C. 493.

Charges of corrupt practice which, if proved, would result in disqualification should be dealt with in the same way as if the charges were criminal ones, and must be proved beyond a reasonable doubt: In re Rosthern Election Petition, Hamm v. Bashford (1915), 31 W.L.R. 184, 8 W.W.R. 793 (Sask.).

It was held by Newlands, J., in In re Rosthern Election Petition, Hamm v. Bashford (1915), 31 W.L.R. 184, 8 W.W.R. 793 (Sask.), that the keeping by an agent of a candidate of liquor in a stable at the polling place and giving drinks of it to voters after voting is such a corrupt practice as to avoid the election, and not one of a trivial, unimportant and limited character, but his decision was reversed (1916), 9 S.L.R. 68, 26 D.L.R. 573, 9 W.W.R. 1044, the Court being of opinion that the drink was not given to the voter "on account of his being about to vote or having voted" within the meaning of The Election Act, R.S.S. 1909, c. 3, s. 227.

Personal expenses of candidates.

(2) The actual personal expenses of a candidate, his reasonable expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising and other lawful and reasonable expenses in connection with the election, incurred by the candidate or any agent in good faith and without any corrupt intent, shall be deemed to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act. 3-4 Geo. V. c. 43, s. 187.

Conveying voters to poll.

188.—(1) A candidate who himself or by any other person on his behalf and every other person who:—

(*a*) Hires or promises to pay or pays for a conveyance to carry a voter to or near or from or on the way to or from a polling place; or

(*b*) Pays the travelling or other expenses of a voter in going to or returning from a polling place;

and every person who for a valuable consideration provides or furnishes a conveyance knowing that it is to be used to carry a voter other than the hirer to, or near, or from, or on the way to or from a polling place shall be guilty of a corrupt practice and shall incur a penalty of $100, and, if a voter, shall be disqualified from voting at the election; but this subsection shall not apply to the carrying of voters to the poll in a conveyance used by the candidate personally on polling day.

Furnishing transportation to voters.

(2) Every person who provides or furnishes transportation free of charge or at a diminished rate to a voter to, or near, or from, or on the way to or from a polling place, and whether passes or tickets or the like are or are not supplied, shall be guilty of a corrupt practice and shall incur a penalty of $100, and, if a voter, shall be disqualified from voting at the election.

"Conveyance," meaning of.

(3) "Conveyance," for the purposes of this section, shall include a horse, team, carriage, cab, vehicle, boat or vessel. 3-4 Geo. V. c. 43, s. 188.

Where a "rig" for conveying electors to the polls is ordered from a livery stable keeper and there is nothing to show that it was not to be paid for, the presumption is that it was hired: Rex ex rel. Sabourin v. Berthiaume (1913), 4 O.W.N. 1201, 11 D.L.R. 68, 24 O.W.R. 559.

This subsection was passed in consequence of the decision in the Sault Ste. Marie Election Case (1903), 10 O.L.R. 356, that transportation by public steamboat did not come within the words "hire a horse, cab, cart, waggon, sleigh, carriage or other conveyance . . . for the . . . transportation of voters in s. 165 of The Ontario Election Act, R.S.O. 1897, c. 9, making illegal the hiring of such vehicles by candidates to convey electors to or from the polls.

Undue influence.

189.—(1) Every person who, directly or indirectly, himself, or by any other person on his behalf, uses or threatens to use force, violence, or restraint, ar inflicts or threatens to inflict injury, damage, harm or loss, or in any manner practises intimidation upon or against a voter in order to induce or compel him to vote, or refrain from voting, or on account of his having voted or refrained from voting, or who, by abduction, duress, or false or fraudulent pretence, device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of a voter, or thereby compels, induces or prevails upon a voter to vote or refrain from voting shall be guilty of a corrupt practice and shall be disqualified from voting for two years and shall incur a penalty of $200, and shall also be liable to imprisonment for any term not exceeding one year.

Penalty.

(2) It shall be a false pretence within the meaning of this section to represent to a voter, directly or indirectly, that the ballot to be used, or the mode of voting at an election is not secret. 3-4 Geo. V. c. 43, s. 189.

Pretence that ballot not secret.

The influence exercised by a Roman Catholic curè and priests, appointed by him to conduct a *retrait* or mission, by means of menaces from the pulpit, punishment temporal or spiritual, exclusion from the sacraments, imputations of mortal sin and refusal of absolution to penitents who will not promise to vote in a certain way, which materially affects the vote at an election, is undue influence, and makes the result of the vote void: Boily v. La Baie Saint Paul (1913), Q.R. 43 S.C. 272.

This penalty is recoverable and may be enforced under The Summary Convictions Act, R.S.O., c. 90, but the prosecutions are to be heard and determined by a police magistrate or two justices of the peace: s. 498 (2).

190. The clerk shall furnish every deputy returning officer with at least two copies of sections 187 to 189, and the deputy returning officer shall post the same in conspicuous places at the polling place. 3-4 Geo. V. c. 43, s. 190.

Posting of provisions as to corrupt practices.

191.—(1) No person shall be excused from answering any question put to him in an action or proceeding touching or concerning an election, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer will tend to criminate him, or subject him to any penalty under this Act.

Witnesses not excused from answering on grounds of privilege, etc.

(2) No answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will tend to criminate him or subject him to any penalty under this Act, shall be used in any proceeding thereunder against such person, if the Judge or officer before whom he is examined gives to the witness a certificate that he claimed the right to be excused

Answers of witness not to be used against him if judge gives certificate.

on either of such grounds, and made full and true answer, to the satisfaction of the Judge. 3-4 Geo. V. c. 43, s. 191.

See s. 136 and notes to that section as to person who has voted not being required to "state how or for whom he voted."

WHEN NO PENALTY RECOVERABLE.

When penalty for corrupt practice not to be recoverable.

192. No pecuniary penalty shall be recoverable for bribery or a corrupt practice if it appears that the person charged and another person or other persons were together guilty of the act charged, either as giver and receiver, or as accomplices or otherwise, and that the person charged has previously *bona fide* prosecuted such other person or persons or any of them for the offence; but this provision shall not apply if the Judge before whom the person claiming the benefit of it is charged, certifies that it clearly appears to him that the person so charged took the first step towards the commission of the offence, and that he was in fact the principal offender. 3-4 Geo. V. c. 43, s. 192.

PART VI.

MEETINGS OF MUNICIPAL COUNCILS.

First Meeting of Council.

First meeting of council.

193.—(1) The first meeting of every council, except a county council, shall be held on the second Monday in January of the year for which the council is elected, at eleven o'clock in the forenoon; and the first meeting of every county council shall be held on the fourth Tuesday of the same month, at two o'clock in the afternoon [but the council of any county may by by-law, provide that the first meeting shall be held at half-past seven o'clock in the evening instead of two o'clock in the afternoon]. 3-4 Geo. V. c. 43, s. 193 (1); 7 Geo. V. c. 42, s. 1.

The words in brackets were added by 7 Geo. V. c. 42, s. 1.

Declarations of office before business.

(2) No business shall be proceeded with at the first meeting until after the declarations of office and qualification have been made by all the members who present themselves for that purpose.

When council deemed organized.

(3) A council shall be deemed to be organized within the meaning of this Act when the declarations of office and qualification have been made by a majority of the members, and it may be organized and business may be proceeded with notwithstanding the failure of any of the other members to make such declarations. 3-4 Geo. V. c. 43, s. 193 (2, 3).

In municipalities governed by The Cities and Towns Act, art. 5265 *et seq.*, R.S.Q. 1909, in which the mayor is elected by the council pursuant to a by-law for that purpose, the election may take place at the first meeting of the council after a general election. It is not prevented by the fact that in one of the polling places the delay for counting the votes has not expired: Ouelette v. Cantin (1911), Q.R. 40 S.C. 92.

See also Lemire v. Faucher (1911), Q.R. 40 S.C. 363.

Certificate of election.

194. A member of a county council shall not take his seat until he has filed with the clerk of the county council a certificate, Form 15, under the hand of the clerk of the municipality for which he was elected and the seal of the corporation. 3-4 Geo. V. c. 43, s. 194.

Warden, election of.

195.—(1) In each year at the first meeting of a county council at which a majority of all the members is present they shall organize as a council and elect one of the members to be warden.

Clerk to preside.

(2) The clerk shall preside, or if there is no clerk the members present shall select a member to preside, and the person so elected may vote as a member.

Conduct of election.

(3) Subject to subsection 4 and to section 206 the warden shall be elected in the manner provided by resolution of the council passed prior to the election.

Case of equality of votes.

(4) In case of an equality of votes the reeve, or in his absence the deputy reeve, or if there are more deputy reeves than one the first deputy reeve, of the municipality which for the preceding year had the largest equalized assessment, shall have a second or casting vote. 3-4 Geo. V. c. 43, s. 195.

Place of Meeting.

Place of first meeting of county council.

196. The first meeting of a county council shall be held at the county hall if there is one, and if there is none, at the court house. 3-4 Geo. V. c. 43, s. 196.

Subsequent meetings.

197. The subsequent meetings of the county council, and all meetings of every other council shall be held at such place as the council from time to time appoints. 3-4 Geo. V. c. 43, s. 197.

Before the passing of The Municipal Amendment Act, 1894, of British Columbia, s. 83 (*a*), a municipal council had no power to hold meetings for the transaction of any administrative, legislative or judicial business of the corporation at a place beyond the territorial boundaries of the municipality, but by that section meetings may be held outside the limits of a municipality when the council has unanimously resolved that it would be more convenient to so hold them: Anderson v. South Vancouver (1911), 45 S.C.R. 425, 20 W.L.R. 434, reversing (1910), 13 W.L.R. 226.

A meeting is not properly called if a member not in attendance has not been given notice of it: O'Donnell v. Widdifield (1912), 3 O.W.N. 597, 1 D.L.R. 271, 21 O.W.R. 1.

This does not mean that notice is necessary where the meeting is held pursuant to an adjournment of a previous meeting at which the member was present.

When a municipal council fixes the first Tuesday of the month for the usual meetings of the council, it is only at the first session held on that day after the general election that the mayor can be appointed.

An appointment made at a meeting of four councillors held on a Monday and without notice calling a special meeting is null and may be set aside. Lemire v. Faucher (1911), Q.R. 40 S.C. 363.

Location of county and township offices.

198.—(1) The council of a county in which an urban municipality lies may hold its meetings, keep its public offices and transact all the business of the corporation and of its officers and servants within such municipality, and may acquire or rent and hold such real estate therein and erect such buildings thereon as may be convenient for such purpose.

(2) The council of a township shall have the like power in respect of an adjacent urban municipality or township in the same county. 3-4 Geo. V. c. 43, s. 198.

See notes to s. 197.

Ordinary meetings to be open.

199.—(1) The ordinary meetings of every council shall be open, and no person shall be excluded therefrom except for improper conduct.

Exclusion of certain persons.

(2) The head or other presiding officer may expel or exclude from any meeting any person who has been guilty of improper conduct at such meeting. 3-4 Geo. V. c. 43, s. 199.

Quorum.

200.—(1) A majority of the whole number of members required to constitute a council shall be necessary to form a quorum.

Where council consists of five members.

(2) Where a council consists of only five members, the concurrent votes of at least three of them shall be necessary to carry any resolution or other measure. 3-4 Geo. V. c. 43, s. 200.

A municipal councillor appointed by the Lieutenant-Governor under art. 327 of the Municipal Code (art. 320 of the new Code), whose appointment is afterwards revoked as provided by art. 329, retains the position and is qualified to form part of a quorum at a sitting of the council so long as notice of the cancellation has not been served in the manner provided in the case of an appointment by art. 328: Laterreur v. Blais (1909), Q.R. 37 S.C. 412.

Head of council to preside.

201.—(1) The head of the council shall preside at all meetings, and may at any time summon a special meeting; and it shall be his duty to do so when requested in writing by a majority of the members.

Special meetings.

(2) In the absence of the head of the council or if his office is vacant, a special meeting may be summoned by the clerk upon a requisition signed by a majority of the members. 3-4 Geo. V. c. 43, s. 201.

Notice calling a special meeting of a municipal council, at which two by-laws were passed regarding the number of tavern and shop licenses to be granted in the municipality, which stated that it was "for the consideration of a by-law relating to tavern licenses," was held to be a sufficient notice: In re Jones and London (1899), 30 O.R. 583.

Resolutions passed at a special meeting of a municipal council, the notice of which did not in any way specify the business to be taken up as required by ss. 284, 288, of The Municipal Act, are invalid and will be quashed: In re Macdonald (1894), 10 Man. L.R. 294.

At the close of the first meeting of the year and of each meeting afterwards, the council adjourned to meet again at the call of the reeve, and subsequent meetings throughout the year were held after notices given by direction of the reeve whenever it was necessary to call a meeting. No mention was made in the notices of the business to be taken up at the meetings.

Held that these meetings were special meetings, and, following In re Macdonald (1894), 10 Man. L.R. 294, that resolutions passed at them were invalid.

In re Macdonald (1895), 10 Man. L.R. 382.

A by-law may be passed after discussion at a special meeting of the Council where all the members are present if no one objects to proceeding on that day. The penalty of nullity provided for by art. 127 of the Municipal Code (art. 116 of the new Code) only applies to the case where there are absentees to whom notice of the meeting has not been given: Mongenais v. Rigaud (1897), Q.R. 11 S.C. 348.

There must be a delay of at least twenty-four hours between the day on which notice is given for a special meeting of a town council and the time fixed for holding the meeting, and resolutions adopted at a meeting not properly convoked may be annulled on the application of any councillor not present: Farwell v. Sherbrooke (1904), Q.R. 25 S.C. 203.

Art. 119 of the new Municipal Code requires 10 days' notice in the case of a county council and two days' notice in the case of a local council.

In this case 24 hours' notice was prescribed by the Charter of the municipality.

Inasmuch as art. 127 of the Municipal Code prescribes on whom notice of a special meeting of a municipal council shall be served, an irregularity as to notice calling a special meeting is ground for quashing a resolution passed at the meeting: Lavoie v. St. Alexis (1908), Q.R. 36 S.C. 7.

The proceedings of a local municipal council at an adjourned special meeting, the *proces-verbal* of which does not state that notice was given to all the members, are void, and art. 16 of the Municipal Code and the absence of prejudice do not make them valid, as the case comes within the exception of the article respecting formalities required on pain of nullity: Desjardins v. Hebertville (1908), Q.R. 36 S.C. 295.

Art. 118 of the New Municipal Code requires that the council, before proceeding to business at a special meeting, must set forth in the minutes of the sitting that notice of the meeting has been given in conformity with the requirements of the Code to all the members of the council who are not present at the opening of the meeting, and art. 14 provides that:—

"No objection founded upon form, or upon the omission of any formality, even imperative, in any act or proceeding relating to municipal matters, can be allowed to prevail in any action, suit or proceeding respecting such matters, unless substantial injustice would be done by rejecting such objection, or unless the formality omitted be such that its omission, according to the provisions of this code, would render null the proceedings or other municipal Acts requiring such formality."

The article of the previous Municipal Code corresponding to art. 118 was art. 127, and that corresponding to art. 14 was art. 16, and they contain respectively in substance the same provisions.

It had been previously held in Filiatrault v. Coteau Landing (1902), Q.R. 21 S.C. 302, which was not referred to in the judgment of the Court in Desjardins v. Hebertville, that the absence of mention in the minutes of the sitting of a municipal council at which a by-law is adopted that notice of the sitting has been sent to the absent councillors, is without effect on the validity of the by-law, if due notice has been given.

When the notice has been given for a special meeting for the adoption of a by-law it is not necessary to renew the notice if the by-law is not adopted at the special meeting, but it is adopted at a subsequent general meeting. Stuart v. Napierville (1916) Q.R. 50, S.C. 407.

Place of special meeting.

202. If there is no by-law or resolution fixing the place of meeting, a special meeting shall be held at the place where the then last meeting was held, and a special meeting may be either open or closed as in the opinion of the council expressed by resolution in writing the public interest requires. 3-4 Geo. V. c. 43, s. 202.

Appointment of presiding officer in absence of head.

203. In the absence of the head of the council, or if his office is vacant, the council may, from among the members, appoint a presiding officer, who during such absence or vacancy shall have all the powers of the head of the council. 3-4 Geo. V. c. 43, s. 203.

Casual absence of presiding officer.

204. If the person who ought to preside at any meeting does not attend within fifteen minutes after the hour appointed, the members present may appoint a presiding officer from among themselves, and he shall have the same authority as the absent person would have had if present. 3-4 Geo. V. c. 43, s. 204.

Head or presiding officer may vote.

Equality of votes to negative question.

205. The head of the council, or the presiding officer, except where he is disqualified to vote by reason of interest or otherwise, may vote with the other members on all questions; and, except where otherwise expressly provided by this Act, any question on which there is an equality of votes shall be deemed to be negatived. 3-4 Geo. V. c. 43, s. 205.

Voting to be open and to be recorded.

206.—(1) Where a division is taken upon the election of a warden or other presiding officer, upon the appointment of an officer of the corporation or upon a by-law, resolution or for any other purpose, each member present shall announce his vote openly and individually, and the clerk shall record it.

(2) No vote shall be taken by ballot or by any other method of secret voting, and every vote so taken shall be of no effect. 3-4 Geo. V. c. 43, s. 206.

No vote by ballot.

207. No member of a council shall vote on any by-law appointing him to any office in the gift of the council or fixing or providing his remuneration for any service to the corporation; but this shall not apply to allowances for attendance at meetings of the council or its committees. 3-4 Geo. V. c. 43, s. 207.

Prohibition as to member voting to appoint himself to office.

208. A council may adjourn its meetings from time to time. 3-4 Geo. V. c. 43, s. 208.

Adjournment.

A meeting of a municipal council may be adjourned temporarily without a formal motion to adjourn by consent of the majority of a quorum present: In re Jones and London (1899), 30 O.R. 583.

Where, on account of an application for a recount of the votes, the council postpones the further consideration of the by-law until after the result of the recount is known, there must be a formal adjournment for such further consideration to a named day, or the council must afterwards give such notice of the time and place when the third reading is to be moved that the parties opposed to it may be in a position to attend and urge their views, and, if the third reading takes place without the notice being given, the by-law will be quashed: In re Cross and Gladstone (1905), 15 Man. L.R. 528, 2 W.L.R. 40.

A by-law of a municipal council respecting elections provided that an elector might file a protest against the election of a councillor with the county secretary within twenty days after the election, that the protest so filed should be read before the council on the first day of the first session after the election, and in case a majority of the council considered there was sufficient ground of complaint it should appoint a committee of three members to examine into the matter and report to the council. The by-law also provided that the council might adjourn the investigation from time to time. The fact that the council adjourned without receiving a report from the committee or adjourning the investigation is no reason for prohibiting the council from hearing and determining the protest at a special meeting called for that purpose: Ex parte Murchie, In re Kerr (1914), 42 N.B. 475.

Where a special meeting of a council is called and the council meets and the meeting breaks up without any adjournment being made and the members afterwards agree to continue the meeting and pass resolutions, the resolutions, having been adopted by a council sitting in an irregular manner and contrary to law, are illegal and void: Schambier v. Halifax South (1897), Q.R. 12 S.C. 197.

Where a regular session of a municipal council is adjourned for want of a quorum to a subsequent day, notice of the adjournment to the absent councillors required by art. 139 of the Municipal Code may be given verbally. Although service of the notice must be established at the resumed session, it is not essential that a mention that this was done should be entered on the minutes: Hudon v. Roy (1909), Q.R. 19, K.B. 68.

PART VII.

BOARDS OF CONTROL.

Board of Control in City of Toronto.

209.—(1) There shall be a Board of Control for the City of Toronto consisting of the Mayor and four controllers to be elected by general vote.

Salary.

(2) The council may by by-law fix the salaries of the members of the board, not exceeding for each member $2,500 per annum. 3-4 Geo. V. c. 43, s. 209.

As to attaching for payment of debts the salaries of controllers, see notes to s. 425*a*.

Boards of Control in certain cities.

209*a*.—(1) In cities having a population of not less than 100,000 and not more than 200,000 inhabitants, there shall be a Board of Control, consisting of the mayor and four controllers to be elected by general vote.

(2) The council may, by by-law, fix the salaries of the members of the board, not exceeding for each member $1,500 per annum.

(3) This section shall be deemed to have been in force from and after the 1st day of July, 1913. 5 Geo. V. c. 34, s. 14.

Board of Control in cities over 45,000 and under 100,000.

210.—(1) The council of any city having a population of less than 100,000, but more than 45,000, may by by-law provide for the election by general vote of four controllers, who with the Mayor shall constitute the Board of Control.

Assent of electors required.

(2) The by-law shall not, nor shall a by-law repealing it, be passed until it has received the assent of the municipal electors.

Salary.

(3) The council may by by-law fix the salaries of the members of the board, not exceeding for each member $1,500 per annum. 3-4 Geo. V. c. 43, s. 210.

Repeal of by-law.

(4) A by-law passed under subsection 1 shall not be repealed until at least five annual elections have been held under it, and no repealing by-law shall be passed later in any year than the first day of November. 5 Geo. V. c. 34, s. 15.

Presiding officer to act in absence of mayor.

211. During the absence of the Mayor or if there is a vacancy in the office the person appointed as presiding officer of the council shall act as a member of the board. 3-4 Geo. V. c. 43, s. 211.

Quorum.

Mayor to preside.

212.—(1) Three members of a Board of Control shall form a quorum, and the Mayor shall preside at the meetings of the board, and in his absence the members shall appoint one of their number to preside.

Filling vacancies.

(2) If a vacancy occurs in the office of controller the council, at a meeting called for that purpose, shall elect a person to fill the vacancy for the unexpired term of the member whose seat has become vacant. 3-4 Geo. V. c. 43, s. 212.

Duties of Board.

213.—(1) It shall be the duty of the Board of Control—

To prepare estimates.

(*a*) To prepare an estimate of the proposed expenditure of the year and certify it to the council for its consideration.

To award contracts.

(*b*) To prepare specifications for and award all contracts and for that purpose to call for all tenders for works, material and supplies, implements, machinery, or other goods or property required and which may lawfully be purchased for the use of the corporation, and to report its action to the council at its next meeting.

To inspect municipal works.

(*c*) To inspect and report to the council monthly or oftener upon all municipal works being carried on or in progress.

To nominate officers of corporation.

(*d*) To nominate to the council all heads of departments and sub-departments in case of a vacancy and, after a favourable report by the head of the department, any other officer of the corporation required to be appointed by by-law or resolution of the council, and any other permanent officers, clerks or assistants, and to recommend the salaries of all officers and clerks.

(*e*) To dismiss or suspend any head of a department and forthwith to report such dismissal or suspension to the council.

To suspend or dismiss.

(2) The council shall not appropriate or expend, nor shall any officer thereof expend or direct the expenditure of any sum not provided for by the estimates or by a special or supplementary estimate certified by the board to the council, without a two-thirds vote of the council authorizing such appropriation or expenditure, but this prohibition shall not extend to the payment of any debenture or other debt or liability of the corporation.

Estimates of Board to bind council except on two-thirds vote.

(3) When opening tenders the board shall require the presence of the head of the department or sub-department with which the subject matter of them is connected, and when requisite the presence of the city solicitor.

Head of department to be present when tenders are opened.

(4) The head of such department or sub-department may take part in any discussion at the board relating to the tenders.

Discussion as to tenders.

(5) The council shall not, without a two-thirds vote, reverse or vary the action of the board in respect of the tenders, when the effect of such vote would be to increase the cost of the work, or to award the contract to a tenderer other than the one to whom the board has awarded it.

Reversal by council of action of board.

The effect of this provision is that "while the board is to take action in the first instance in the awarding of contracts yet whatever their action may be it is subject to review by the council, and in the two cases specified requires a two-thirds vote to reverse or vary it:" In re Brundle and Toronto (1910) 2 O.W.N. 35.

A council may by a two-thirds vote reverse the action of the Board of Control in deciding to accept the lowest tender and accept another tender at a higher price: West v. Montreal (1911), Q.R. 21 K.B. 289.

(6) No head of a department or sub-department or other permanent officer, clerk or assistant shall be appointed or selected by the council in the absence of the nomination of the board as provided by clause (*d*) of subsection 1, without a two-thirds vote.

Appointment of head of department on nomination of board.

Two-third vote of council to reinstate head of department dismissed.

(7) Where a head of a department has been dismissed by the board, he shall not be reappointed or reinstated by the council without a two-thirds vote.

Controlling appointment and duties of subordinate officers.

(8) In the absence of a by-law of the council prescribing the mode of appointing, engaging or employing any officers, clerks, assistants, employees, servants and workmen not included in clauses (*d*) and (*e*) of subsection 1, the board may direct by whom and in what manner they shall be appointed, engaged or employed.

Submission of by-laws, etc.

(9) The board may submit proposed by-laws to the council.

Amalgamation of departments.

(10) The board, where in its opinion it is desirable, may amalgamate departments or sub-departments.

Secretary of board.

(11) The board may appoint a secretary or clerk who shall keep minutes of its proceedings, prepare its reports and perform such other duties as may be assigned to him by the board or by the mayor or the council.

Other duties assigned by council.

(12) The council may by by-law or resolution assign to the board such other duties as the council may deem proper.

Copies of minutes, when to be furnished to council.

(13) The board, when so required by resolution of the council, and upon one week's notice thereof, shall furnish to the council copies of the minutes of its proceedings and any other information in its possession which the council may require.

Referring back matter for reconsideration.

(14) The council may refer back to the board any report, nomination, question or matter for reconsideration.

Recording votes on action of board.

(15) Where it is sought in council to reverse, set aside or vary the action of the board, or where a two-thirds vote is required, the vote by yeas and nays shall be recorded in the minutes of the council.

School Boards to send in estimates.

(16) The public, the high and separate school boards, the board of education, the board of commissioners of police and the public library board and every other board whose estimates are

to be provided for, shall furnish to the board on or before the first day of March in each year their annual estimates.

Certain officers not to be nominated by Board.

(17) Clause (*d*) of subsection 1 shall not apply to a member of the fire department, except the head of it, or to an assessor, except the assessment commissioner, or to a representative of the council upon the board of a harbour trust, or of a corporation on the board of which the council is entitled to elect a representative, or to a member of the Court of Revision.

Powers of head of department before 7th April, 1896.

(18) Nothing in this section shall deprive a head of a department of the power which he possessed on the 7th day of April, 1896, under any by-law or otherwise, to dismiss any subordinate officer, clerk or employee.

Exclusive rights of board.

(19) Notwithstanding anything in this Act, the duties assigned to the board shall be discharged exclusively by the board, except in the case mentioned in subsection 9. 3-4 Geo. V. c. 43, s. 213.

PART VIII.

OFFICERS OF MUNICIPAL CORPORATIONS.

THE HEAD.

Who to be head of council.

214. The warden of a county, the mayor of a city or town, and the reeve of a village or township, shall be the head of the council and the chief executive officer of the corporation. 3-4 Geo. V. c. 43, s. 214.

Duties of head of council.

215. It shall be the duty of the head of the council to—

(*a*) Be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed;

(*b*) Oversee the conduct of all subordinate officers in the government of it and, as far as practicable, cause all negligence, carelessness and violation of duty to be prosecuted and punished; and—

In In re West Nissouri Continuation School (1916), 38 O.L.R. 207, 33 D.L.R. 209, reference was made to clauses (*a*) and (*b*) and to the application of them to the duty of the head of the council as to filling vacancies in the school board.

(*c*) Communicate from time to time to the council such information, and recommend to it such measures as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the municipality. 3-4 Geo. V. c. 43, s. 215.

When an agreement authorized by by-law of the council is altered by the mayor without authority, an action will lie by a ratepayer to obtain a declaration of the nullity of the document or its cancellation and requiring the mayor to execute an agreement in the form authorized by the council and also to restrain the corporation from acting upon the unauthorized agreement: Black v. Ellis (1906), 12 O.L.R. 403.

A municipal corporation may lawfully undertake the defence of a motion for prohibition to prevent the mayor from hearing and determining prosecutions for offences against a local option law where the corporation was in effect the prosecutor and interested in the fines, and the corporation may obligate itself to the advocate defending for the costs of opposing the motion for prohibition: Gaudet v. Megantic (1913), Q.R. 46, S.C. 300, 10 D.L.R. 553.

The mayor of a town cannot, in opposition to a resolution of the council, instruct a solicitor to enter an appearance in an action brought against the corporation: Corning v. Yarmouth (1912), 9 D.L.R. 275, 12 E.L.R. 205 (N.S.).

In general and more particularly, where the mayor refuses to sign a contract which the council has decided to enter into the council may by resolution authorize the sealing and delivery with the counter-signature of any designated person: Wilson v. Ingersoll (1916), 38 O.L.R. 260.

Remuneration of head.

216. The head of the council of a county and of an urban municipality may be paid such annual or other remuneration as the council may determine. 3-4 Geo. V. c. 43, s. 216.

Mayor may call out *posse comitatus.*

217. The mayor of a city or town may call out the *posse comitatus* to enforce the law within the municipality under the same circumstances in which the sheriff of a county may now by law do so. 3-4 Geo. V. c. 43, s. 217.

As conservator of the King's peace, it is the duty of the sheriff to suppress unlawful assemblies and riots and apprehend offenders and to defend his country against invasion by the King's enemies, for which purposes he may take with him the *posse comitatus.* Any person who without physical impossibility refuses to assist in the suppression of a riot may, if it was reasonably necessary to call on him for assistance, be indicted, and it is no ground of defence that, owing to the number of rioters, his assistance would have been ineffectual: Halsbury's Laws of England, vol. 25, par. 1407.

It is these powers of the sheriff that are by s. 217 conferred on the mayor of a city or town.

A municipal corporation is liable to pay the expenses incurred in calling out, under the terms of The Militia Act, local troops for the purpose of quelling a riot: Rex v. Sault Ste. Marie (1910), 1 O.W.N. 1144.

It was held in Attorney-General v. Sydney (1913), 46 N.S. 527, 9 D.L.R. 282, 12 E.L.R. 448, 49 C.L.J. 119, that where the active militia was called out in aid of the civil power under The Militia Act by one who is not "the senior officer of the active militia present at any locality," the corporation is not liable to repay the amount advanced out of the Consolidated Fund of Canada to pay the expense incurred, and that the words, "senior officer of the active militia present at any locality," mean the senior officer at or nearest the place where the riot has occurred or is anticipated, and not the senior officer of the military district.

This decision was reversed by the Supreme Court of Canada (1914), 49 S.C.R. 148, 16 D.L.R. 726, 50 C.L.J. 233, the Court holding that the "senior officer present at any locality" is not necessarily the senior officer of a corps stationed at the place where the riot occurs or is likely to occur, and that the justices, in their discretion, may requisition the senior officer of any available force.

THE CLERK.

Appointment of clerk, and his duties.

218. Every council shall appoint a clerk, whose duty it shall be:

(*a*) To truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the council;

(*b*) If required by any member present, to record the name and vote of every member voting on any matter or question;

(*c*) To keep the books, records and accounts of the council;

(*d*) To preserve and file all accounts acted upon by the council;

(*e*) To keep in his office or in the place appointed for that purpose, the originals of all by-laws, and of all minutes of the proceedings of the council; and

(*f*) To perform such other duties as may be assigned to him by the council. 3-4 Geo. V. c. 43, s. 218.

Minutes, etc., to be open to inspection.

219.—(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in the next preceding section and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and the assessment rolls, voters' lists, poll books, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under his hand and the seal of the corporation, to any applicant on payment at the rate of ten cents for every hundred words, or at such lower rate as the council may fix.

Copies to be furnished, and charges therefor, etc.

(2) A copy of any record, book or document in the possession or under the control of the clerk purporting to be certified under his hand and the seal of the corporation, may be filed and used in any Court in lieu of the original, and shall be received in evidence without proof of the seal or of the signature or official character of the person appearing to have signed the same, and without further proof, unless the Court otherwise directs. 3-4 Geo. V. c. 43, s. 219.

Documents certified by clerk to be receivable in evidence.

The reporters of a newspaper are entitled at reasonable times to access to the offices of the clerk of a municipality for the purposes mentioned in this section and to the proper offices for the purpose of inspecting the statement of the auditors under s. 237 and inspecting any record or document the inspection of which is expressly authorized by *The Municipal Act* or by any other statute, and are entitled to inquire at reasonable times from the heads of departments whether they have any information which they are ready to give for publication, but are not entitled to remain in any municipal office when requested by the officer in charge of it to retire: Journal Printing Company v. McVeity (1915), 33 O.L.R. 166, 21 D.L.R. 81.

This decision means, shortly stated, that a newspaper reporter has no higher rights than any other citizen.

A clerk cannot excuse himself for refusing a demand by a ratepayer to allow him to inspect the minutes of meetings of the council and to obtain certified copies of resolutions, tendering the proper fee, on the ground that the reeve had taken away the books for use in certain litigation against the corporation, and that he could not get the books or papers so as to comply with the demand, and a mandamus was granted: In re Cuddy (1895), 10 Man. L.R. 422.

The ground of this decision was that it was the duty of the clerk to keep the books and records of the corporation and of the council in his office or in the place appointed by the council, and that neither the reeve nor any other person had authority to take any of them out of the custody of the clerk.

220. Where the clerk is absent or incapable through illness of performing his duties, the council may by resolution provide that some other person, to be named in the resolution or to be appointed under the hand of the clerk, shall act in his stead and the person so appointed shall have all the powers of the clerk. 3-4 Geo. V. c. 43, s. 220.

Provision for absence, etc., of clerk.

Returns to be made to Bureau of Industries.

221.—(1) The clerk of every local municipality shall in each year, within one week after the final revision of the assessment roll, make a return to the Secretary of the Bureau of Industries, on forms approved by the Lieutenant-Governor in Council and furnished by the secretary, of such statistics or information as the assessment roll or other records of his office afford, and the forms call for; and every such return shall be transmitted by registered post.

Section 9 (3) of *The Bureau of Municipal Affairs Act*, 7 Geo. V. c. 14, requires returns to be made to the Director of the Bureau of Municipal Affairs, instead of to the Secretary of the Bureau of Industries.

Penalty.

(2) For every contravention of this section, the clerk shall incur a penalty not exceeding $40.

Return to Assembly.

(3) The secretary shall cause to be prepared a tabulated statement of the returns which the Minister of Agriculture shall lay before the Assembly. 3-4 Geo. V. c. 43, s. 221.

THE TREASURER.

Treasurer to be appointed.

222.—(1) Every council shall appoint a treasurer, who may be paid either by salary or by a percentage, and may also appoint a deputy treasurer to act in the absence of the treasurer or in case of a vacancy in the office.

To give security.

(2) The treasurer and the deputy treasurer, before entering on the duties of their offices, shall give such security as the council directs for the faithful performance of such duties, and for duly accounting for and paying over all money which comes into their hands.

Annual inquiry as to sufficiency of.

(3) It shall be the duty of every council, in every year, to inquire into the sufficiency of the security given by the treasurer, and to cause to be entered in its minutes the result of the inquiry. 3-4 Geo. V. c. 43, s. 222.

It is no answer to an action against a surety of a municipal treasurer that, while the treasurer was actually in default to a large amount, the council, acting in good faith, adopted reports of its auditors which, owing to the fraudulent manipulations of his books by the treasurer, did not disclose the true state of his accounts or that statements were made to the surety in good faith by a member of the council and some of the corporation's officials that the treasurer's accounts were correct: Simcoe v. Burton (1898), 25 A.R. 478.

A treasurer has no authority to bind the municipal corporation by a contract to pay the cost of advertising his list of lands for sale for the arrears of taxes. In selling lands for arrears of taxes, he is a statutory officer designated by the legislature, and the corporation cannot interfere with him in the discharge of his duties: Canadian Bank of Commerce v. Toronto Junction (1902), 3 O.L.R. 309, approving Warwick v. Simcoe (1900), 36 C.L.J. 461.

A treasurer *pro tem.* was appointed in 1899 and given an order expressed to be on "the treasurer of the township of Malahide" for $5,799.52, the balance in hand of the previous treasurer at the time of his death. The treasurer *pro tem.* carried forward this balance in his cash book, though he had not received the money, and went on honouring orders drawn upon him by the corporation. Although before the end of 1899 the estate of the deceased treasurer proved to be insolvent, he continued from year to year to follow this course, showing balances in favour of the corporation which were non-existent, except upon the footing that he had received the $5,799.52. He proved the debt against the estate in the name of the corporation and received three dividends. He did not bring the facts directly to the notice of the corporation until 1905, and the corporation was ignorant of them.

On this state of facts it was held that he was entitled to recover the balance which was due to him and that he was not chargeable with the $5,799.52.

Leslie v. Malahide (1906), 13 O.L.R. 97.

The sureties of the treasurer are not entitled to compel the cancellation of their bond although the treasurership has come to an end, the treasurer's accounts have been audited, and the audit adopted by the corporation and payment over to the new treasurer duly made accordingly: Shewfelt v. Kincardine (1915), 35 O.L.R. 39, 344, 26 D.L.R. 700.

Appointment of county treasurer pro tem.

223.—(1) In case of the death of the treasurer of a county, the warden may, by warrant under his hand, appoint for such special purpose as he may deem necessary, a treasurer *pro tempore*, who shall hold office until the next meeting of the council; and all acts authorized by the warrant which are performed by him shall be as valid and binding as if performed by a treasurer.

Security to be given by.

(2) The warden shall, by the warrant, direct what security shall be given by the treasurer *pro tempore* for the faithful performance of his duties, and for duly accounting for, and paying

over, all money which comes into his hands, and before entering upon his duties he shall give such security, but he shall not interfere with the books, vouchers, or accounts of the deceased treasurer until a proper audit of them has been made. 3-4 Geo. V. c. 43, s. 223.

To receive and take care of and disburse money, etc.

224.—(1) The treasurer shall receive, and safely keep, all money of the corporation, and shall pay out the same to such persons and in such manner as the laws of Ontario and the by-laws or resolutions of the council direct.

When member of council may be paid for work.

(2) Except where otherwise expressly provided by this Act, a member of the council shall not receive any money from the treasurer for any work or service performed or to be performed.

His liability limited.

(3) The treasurer shall not be liable for money paid by him in accordance with a by-law or resolution of the council, unless another disposition of it is expressly provided for by statute. 3-4 Geo. V. c. 43, s. 224.

Treasurer to open account in name of corporation.

225. The treasurer shall open an account in the name of the corporation in such of the chartered banks of Canada or at such other place of deposit as may be approved of by the council, and shall deposit to the credit of such account all money received by him on account of the corporation, and he shall keep the money of the corporation entirely separate from his own money. 3-4 Geo. V. c. 43, s. 225.

A municipal corporation, having contracted with a bank to "keep its current account there," is not bound to deposit there all its money, especially a sum borrowed for a special purpose, *e.g.*, the construction of a bridge: La Caisse d'Economie v. Quebec (1913), Q.R. 23 K.B. 207.

Half-yearly statement of assets.

226. Every treasurer shall prepare and submit to the council, half-yearly, a statement of the money at the credit of the corporation; and in local municipalities which have passed by-laws requiring it to be done, shall, on or before the 20th day of December in each year, prepare and transmit to the clerk a list of all persons who have not paid their municipal taxes on or before the 14th day of that month. 3-4 Geo. V. c. 43, s. 226.

Annual list of persons in default for taxes.

227.—(1) The treasurer of every municipality shall, on or before the first day of April in each year, transmit by registered post to the Secretary of the Bureau of Industries, on forms approved by the Lieutenant-Governor in Council and furnished by the secretary, such information or statistics regarding the finances or accounts of the corporation as the forms call for. 3-4 Geo. V. c. 43, s. 227 (1); 5 Geo. V. c. 34, s. 16.

Returns to be made to Bureau of Industries.

Section 9 (3) of *The Bureau of Municipal Affairs Act,* 7 Geo. V. c. 14, requires returns to be made to the Director of the Bureau of Municipal Affairs instead of to the Secretary of the Bureau of Industries.

(2) For every contravention of this section the treasurer shall incur a penalty not exceeding $40.

Penalty

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O., c. 90, (see s. 498 (1)).

(3) The Secretary shall cause to be prepared a tabulated statement of the returns, which the Minister of Agriculture shall lay before the Assembly. 3-4 Geo. V. c. 43, s. 227 (2, 3).

Tabulated statement of returns.

228.—(1) Every treasurer, on or before the 7th day of January in each year, shall transmit by registered post to the head of every municipality to whose treasurer he has made any payment during the year ended on the 31st day of the next preceding December, a statement signed by him setting forth every such payment and the date of it.

Treasurer making payments to other municipalities to send statements to head.

(2) The head of the municipality shall cause every such statement received by him to be read at the next meeting of the council after the receipt of it, and to be delivered to the auditors before the audit of the accounts for the year to which the statement relates. 3-4 Geo. V. c. 43, s. 228.

Statements to be read to council and delivered to auditors.

229. Where a treasurer is removed from office, or absconds, the council shall forthwith give notice to his sureties, and his suc-

Provision on dismissal from office.

cessor may draw any money of the corporation which may have been deposited by the treasurer to his credit. 3-4 Geo. V. c. 43, s. 229.

ASSESSORS AND COLLECTORS.

Assessors and collectors, appointment of.

230.—(1) The council of every local municipality shall annually appoint as many assessors and collectors for the municipality as may be deemed necessary.

When appointments to be made.

(2) The appointment shall be made as soon as practicable after the organization of the council.

Regulations as to duties of.

(3) The council may assign to an assessor or collector the district within which he is to act, and may make regulations for governing him in the performance of his duties.

Extent of jurisdiction.

(4) In a city, town or township the same person may be appointed assessor or collector for more than one ward or polling subdivision.

Who not to be assessor or collector.

(5) A member of the council or the clerk or treasurer of the municipality shall not be appointed assessor or collector.

Returns as to tax defaulters.

(6) The collector of a municipality, the council of which has passed a by-law requiring the taxes to be paid on or before the 14th day of December, shall, on the 15th day of December in each year, return, upon oath, to the treasurer the names of all persons who have not paid their taxes. 3-4 Geo. V. c. 43, s. 230.

A tax collector paid by commission on all arrears of taxes collected is not entitled to commission when lands offered for sale for arrears of taxes are bid in by the corporation because the amount offered for them is less than the arrears of taxes and costs: North Vancouver v. Keene (1903), 10 B.C.R. 276.

Assessment Commissioner in cities and towns.

231.—(1) The council of a city or town, instead of appointing assessors, may appoint an assessment commissioner, who, in conjunction with the mayor, shall appoint such assessors as may be necessary, and the assessment commissioner and the assessors shall constitute a board of assessors, and shall have all the powers and perform all the duties of assessors appointed under the next preceding section.

Duties of in certain cities and towns. (2) The council of a city or town, having a population of less than 20,000 may provide that all the duties of an assessor shall be performed by the assessment commissioner, and in that case it shall not be necessary to appoint assessors.

Tenure of office. (3) It shall not be necessary to appoint the assessment commissioner, assessors or collectors of a city annually.

Notices. (4) In a city or town which has an assessment commissioner, all notices in matters relating to assessment which in other municipalities are required by this or any other Act to be given to the clerk shall be given to the assessment commissioner. 3-4 Geo. V. c. 43, s. 231.

"Population."—See s. 2, cl. (*m*).

AUDITORS AND AUDIT.

Auditors. **232.**—(1) Subject to sections 233 and 240, every council shall, at its first meeting in every year, appoint two auditors.

Disqualification for office of. (2) No person who is or during the next preceding year was a member of the council, or the clerk or treasurer of the municipality, or who has, or during the next preceding year had, directly or indirectly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the corporation, except as auditor, shall be appointed an auditor.

Case of county auditor refusing to act. (3) If a person appointed auditor for a county refuses, or is unable to act, the head of the council shall appoint another person not in the employment of such head to be auditor in his stead. 3-4 Geo. V. c. 43, s. 232.

Appointment of auditors in November or December. **233.** The council of any municipality may provide that the auditors shall be appointed in November or December in each year for the next succeeding year, and thereafter while the by-law remains in force the council shall appoint the auditors in accordance with its terms, instead of at its first meeting. 3-4 Geo. V. c. 43, s. 233.

Duty of auditors.

234.—(1) The auditors appointed under section 233 shall, at the end of every month, beginning with the first month in the year following that of their appointment, examine and report upon all accounts affecting the corporation, or relating to any matter under its control, or within its jurisdiction, and after the examination of every account, voucher, receipt and paid debenture submitted for audit, shall stamp on it, in indelible letters, the word "audited," and initial it.

(2) The auditors appointed under section 233 shall also perform the duties of auditors appointed under section 232 with respect to the accounts and transactions of the year in which they are appointed. 3-4 Geo. V. c. 43, s. 234.

Auditors may administer oaths.

235. An auditor may administer an oath to any person concerning any account or other matter to be audited. 3-4 Geo. V. c. 43, s. 235.

Filling vacancies.

236. Where an auditor of a city dies, or resigns, or his office becomes vacant from any cause, the council may fill the vacancy, and the person appointed shall hold office for the remainder of the year for which the original appointment was made. 3-4 Geo. V. c. 43, s. 236.

Duties of auditors.

237.—(1) The auditors appointed under section 232 shall examine and report upon all accounts affecting the corporation or any commission managing a public utility work or relating to any matter under its control or within its jurisdiction for the year ended on the 31st day of December preceding their appointment.

To prepare abstract and detailed state-

(2) They shall annually prepare in duplicate an abstract of the receipts, expenditure, assets, and liabilities of the corporation or

commission and a detailed statement in duplicate of the same for the next preceding year in such form as the council may direct, and shall report on all accounts audited by them, and make a special report of any expenditure made contrary to law, and shall transmit by registered post one copy of the abstract and one copy of the detailed statement to the Secretary of the Bureau of Industries, and shall file the other abstract, the other detailed statement, and their reports, in the office of the clerk not later than the 1st day of March.

ment of receipts and expenditure, etc.

Section 9 (3) of *The Bureau of Municipal Affairs Act*, 7 Geo. V. c. 14, requires returns to be made to the Director of the Bureau of Municipal Affairs, instead of to the Secretary of the Bureau of Industries.

(3) Where the auditors are appointed under section 233, or where they have been required to make their audit under the provisions of section 240, the abstract, statements, and reports mentioned in subsection 2, shall be, with respect to the year for which they are appointed, and shall be made and filed within one month after the expiry of that year and the auditors shall be deemed to continue in office during that period for the purpose only of preparing and filing such statements and reports.

Penalty.

(4) For every contravention of subsection 2 or 3, an auditor shall incur a penalty not exceeding $40.

Inspection of abstract statement, etc.

(5) A resident of the municipality may inspect the abstract, statements and reports at all reasonable hours, and may, by himself or his agent, at his own expense, make a copy of or extracts from them.

Report on treasurer's sureties.

(6) The auditors of every municipality shall also make a report upon the condition and sufficiency of the securities of the treasurer; and such report shall show what cash balance, if any, was due from the treasurer to the corporation at the date of the audit, and where it is deposited and what security there is that the same will be available when required; but this shall not relieve the council from the performance of the duty imposed by section 222.

Clerk to publish abstracts and statements.

(7) The clerk shall publish the abstract, statements and reports in such form as the council may direct; and in the case of a local municipality shall transmit a copy of the abstract and statements to the clerk of the council of the county, and the same shall be kept in his office.

Inspection of books of bank or company.

(8) The auditors may make a written requisition upon the treasurer for a request to any bank or company with which the money is or has been deposited, or with which the treasurer has kept an account, to exhibit the account and details thereof to them; and it shall be the duty of the treasurer, within twenty-four hours after the delivery to him of such requisition, to comply with it.

Publication of statements of assets and liabilities.

(9) The council of every town, village and township shall hold a meeting on the 15th day of December in each year, and shall immediately thereafter publish a detailed statement of the receipts and expenditures of the corporation for the portion of the year ended on that day, together with a statement of assets, liabilities and uncollected taxes, and a similar statement respecting the last 15 days of the next preceding year.

Publication of statements.

(10) The statements shall be signed by the head of the council and by the treasurer, and shall be published.

Posting up statements.

(11) Instead of publishing the statements the council may cause them to be posted up, not later than the 24th day of December, in the office of the clerk and of the treasurer, at all post offices, and at not less than 12 other conspicuous places in the municipality.

Delivery of copies to electors.

(12) The clerk shall procure to be printed not less than one hundred copies of the statements, and shall deliver or transmit by post one of them to every elector who requests him to do so, not later than the 24th day of December in each year, and shall also see that copies of the statements are produced at the nomination meeting.

Subsections 9-12 not to apply to certain municipalities.

(13) The next preceding four subsections shall not apply to a township municipality in a provisional judicial district, or in the electoral district of North Renfrew, or in the Provisional County of Haliburton.

Making untrue entries in financial statement.

(14) A member of a council or an officer of a corporation, or any other person, who knowingly makes or causes or procures to be made, any untrue entry in the statements, or who knowingly omits or causes to be omitted from them anything which should be included, shall incur a penalty of not less than $5 or more than $40. 3-4 Geo. V. c. 43, s. 237.

The penalties are recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O., c. 90 (see. s. 498 (1)).

The standard of duty of a municipal auditor is at least as high as that of an auditor of an incorporated company.

Referring to the duty of such an auditor, it is said in Halsbury's Laws of England, vol. 5, par. 438:—

"It is the duty of an auditor not merely to verify the arithmetical accuracy of the balance-sheet, but its substantial accuracy, to see that it includes the particulars required by the articles or by statute and contains a correct representation of the state of the company's affairs. While therefore . . . it is not his duty to consider whether the business is prudently conducted, he is bound to consider and report to the shareholders whether the balance-sheet shows the true financial position of the company. To do this, he must examine the books and take reasonable care that their report is true."

The auditor must shew reasonable skill, care and caution in the performance of his duties, but he is not bound to be a detective, and is "a watchdog, but not a bloodhound": per Lopes, L.J., in In re Kingston Cotton Mill Company (No. 2), L.R. (1896) 2 Ch. 279, 288.

Audit of accounts before payment.

238. The council of a city or town may provide that all accounts shall be audited before payment. 3-4 Geo. V. c. 43, s. 238.

The council to audit finally, etc.

239. The council shall, upon the report of the auditors, finally audit and allow the accounts of the treasurer and collectors, and all accounts chargeable against the corporation; and where charges are not regulated by law, the council shall allow what is reasonable. 3-4 Geo. V. c. 43, s. 239.

Auditors appointed as permanent officers.

240. Instead of appointing two auditors annually as provided by section 232, the council may by by-law provide for the appointment of one or more auditors to hold office during pleasure, who shall daily or otherwise examine, audit and report on the accounts of the corporation. 3-4 Geo. V. c. 43, s. 240.

Money payable by province to be retained if returns not made.

241. The Treasurer of Ontario [may in his discretion] retain in his hands any money payable to a corporation, if it is certified to him by the Secretary of the Bureau of Industries that any officer of the corporation whose duty it is to make returns to the Bureau has not done so. 3-4 Geo. V. c. 43, s. 241; 7 Geo. V. c. 42, s. 2.

The words in brackets were added by 7 Geo. V. c. 42, s. 2.
See notes to s. 237 (2).

DUTIES OF OFFICERS RESPECTING OATHS AND DECLARATIONS.

Declaration of qualification.

242.—(1) Every person elected as a member of the council of a township or as trustee of a police village, before he takes the declaration of office or enters upon his duties, shall make and subscribe a declaration of qualification, Form 2.

Declaration of office.

(2) Every member of a council, trustee of a police village, every public utility commissioner and commissioner of industries, and every clerk, treasurer, assessment commissioner, assessor, collector, engineer, clerk of works and street overseer or commissioner, before entering on the duties of his office, shall also make and subscribe a declaration of office, Form 16.

Declaration of person appointed to more than one office.

(3) Every person elected or appointed to two or more municipal offices may make one declaration of office as to all of them.

Declaration of returning officers and others.

(4) Every returning officer, deputy returning officer, poll clerk, constable and other election officer, before entering upon the duties of his office, shall make and subscribe a declaration, Form 17.

Administration of oaths to deputy returning officers and poll clerks.

(5) Where by this Act any oath or declaration is required to be made by a deputy returning officer, or by a poll clerk, and no special provision is made therefor, the same, in the case of a

deputy returning officer, may be made before the returning officer for the municipality or ward, or before the poll clerk, or before any person authorized to administer an oath; and, in the case of a poll clerk, before any such person, or before the deputy returning officer.

Auditor's declaration.

(6) Every auditor, before entering upon his duties, shall make and subscribe a declaration, Form 18.

Filing of declaration.

(7) Except where otherwise provided the person by whom the oath or declaration is made shall file the same in the office of the clerk within 8 days after it is made. 3-4 Geo. V. c. 43, s. 242.

Certain officers may administer certain oaths.

243. Except where otherwise expressly provided, in addition to the persons authorized by law to administer an oath, the head of a council, a controller, an alderman, a reeve, or the clerk of a municipality may, within the municipality, administer an oath, or take any declaration under this Act or relating to the business of the corporation. 3-4 Geo. V. c. 43, s. 243.

"Persons authorized by law to administer an oath."—See The Interpretation Act, R.S.O., c. 1, s. 23.

Penalty for refusing to accept office or take declaration, etc.

244. Every qualified person duly elected to be a member of a council, a trustee of a police village, or a public utility commissioner, and every person appointed as assessment commissioner, commissioner of industries, assessor or collector, who refuses the office to which he has been elected or appointed, or does not, within twenty days, after knowing of his election or appointment, make and file the declaration of office and in the case of a member of the council of a township or of a trustee of a police village, the declaration of qualification and every person authorized to take any such declaration, who upon reasonable demand, refuses to take it, shall incur a penalty of not less than $8, or more than $80, which, when recovered, shall be paid over to the corporation. 3-4 Geo. V. c. 43, s. 244.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O., c. 90 (see s. 498).

SALARIES, TENURE OF OFFICE AND GRATUITIES.

Salaries of officers.

245.—(1) When the remuneration of any officer of a corporation is not fixed by law, the council shall fix it.

A statutory provision which requires a two-thirds vote of the members of a council present for rescinding previous actions of the council does not apply to a resolution altering the salary payable to an officer whose engagement may be terminated by one month's notice on either side: Tetley v. Vancouver (1897), 5 B.C.R. 276.

Remuneration of clerk for certain services. Rev. Stat. c. 260.

(2) The council shall give to the clerk, for services and duties performed by him, under *The Ditches and Watercourses Act*, a fair and reasonable remuneration, to be fixed by the council.

Fees for copies of awards, etc.

(3) The council shall fix the sum to be paid to the clerk by any person for copies of awards or other documents, or for any other services rendered by him, other than such as it is his duty to perform under that Act.

Remuneration not to be settled by tender.

(4) Where an appointment to an office or an arrangement for the discharge of the duties of an office is to be made, the council shall not invite or require applicants to name a sum for which they will discharge the duties of the office, or give the appointment to, or make the arrangement with, the person who offers to perform the duties at the lowest salary or remuneration.

When municipality employing solicitor at a salary may recover costs.

(5) Notwithstanding that a corporation employs a solicitor or a counsel whose remuneration is wholly or partly paid by salary, annual or otherwise, the corporation shall have the right to recover and collect lawful costs in all actions and proceedings, in the same manner as if the solicitor or counsel was not so remunerated, if the costs are, by the terms of his employment, payable to the solicitor or counsel as part of his remuneration in addition to his salary. 3-4 Geo. V. c. 43, s. 245.

It was held in Ottawa v. Ottawa Electric Company (1904), 3 O.W.R. 588, 796, that this subsection did not apply so as to entitle the corporation to collect costs incurred before the subsection was enacted.

It was held in Stephens v. Calgary (1909), 2 A.L.R. 331, 12 W.L.R. 379, that, in the absence of evidence that the costs, as ordinarily allowable, would more than indemnify the corporation against the salary paid to its solicitor, the corporation was entitled to the usual costs. The principle of the case of Henderson v. Merthyr Tydfil, L.R. (1900) 1 Q.B. 434, was applied.

This subsection applies to costs incurred in the Supreme Court of Canada as well as to those incurred in a provincial Court: Ponton v. Winnipeg (1909), 41 S.C.R. 366, which was a decision on a corresponding provision of a Manitoba statute.

Tenure of office.
Duties.

246. All officers appointed by a council shall hold office during the pleasure of the council, and shall, in addition to the duties assigned to them by this Act, perform all other duties required of them by any other Act, or by by-law of the council. 3-4 Geo. V. c. 43, s. 246.

The chief constable of a municipal corporation can only hold office during the pleasure of the council although he may have been appointed for one year by by-law, Vernon v. Smith's Falls (1891), 21 O.R. 331.

Where a committee of the council had reported recommending that a constable be dismissed, but the council had not adopted the report *simpliciter* but had recommended that he should be employed in another capacity, it was held that this did not constitute a dismissal: Ward v. Toronto (1908), 12 O.W.R. 134, 394, 396.

A judgment requiring a corporation to do or abstain from doing an act is an injunction that must be obeyed by all officers of the corporation, and proceedings for disobedience of the judgment may be taken against them by attachment or committal: In re Bolton and Wentworth (1911), 23 O.L.R. 390-393.

The term "officers," as used in this section, includes the members of the council. *Ib.*

It was held in Speakman v. Calgary (1908), 1 A.L.R. 454, 9 W.L.R. 264, that a city engineer is an employee or servant, not an "officer," and that a by-law which enacted that "all officers appointed by the council shall be deemed to hold their respective offices during pleasure, unless otherwise provided by ordinance or by-law, and office hours, except for the mayor, city solicitor and auditor, shall be, etc.," did not extend to the city engineer; that, while he may be termed an "official," he is not an "officer," which latter word was intended to apply to such officers as the city clerk, treasurer, assessor, etc., whose powers and acts are primarily and for the most part of an executive and coercive, or *quasi-coercive*, character, and are binding upon and affect the rights of the inhabitants and ratepayers of the municipality.

Under The Towns Act, s. 69, a municipal corporation has power to dismiss or suspend a member of its police force even where there is a contract in writing between the corporation and the dismissed officer and the term of employment has not been completed and no cause exists for the termination of it: Irwin v. Blairmore (1914), 6 W.W.R. 1032 (Alta.).

A person duly elected at a meeting of a municipal council to municipal office, pursuant to a statute giving the corporation power so to appoint its officers, becomes thereby the servant of the corporation without further evidencing or ratification of the contract of hiring either by writing under the corporate seal or otherwise: Tuck v. Victoria (1892), 2 B.C.R. 179.

A stipendiary magistrate is a town officer within the meaning of The Towns Incorporation Act, R.S.N.S. 1900, c. 71, s. 121, although appointed by the Lieutenant-Governor-in-Council and not by the council, and he is entitled to the remedies provided by that section where his salary is reduced by resolution of the council: In re Pelton (1913), 47 N.S. 103, 11 D.L.R. 623, 12 E.L.R. 540, reversing (1912), 7 D.L.R. 465, 11 E.L.R. 556.

A municipal corporation may be compelled by mandamus to restore to office an assistant assessor who has been dismissed without personal notice of the council meeting called to consider the question of his dismissal. Notice of the meeting must be served personally and not merely by leaving a copy of it with some one at the place of residence of the person served: Rex v. Halifax, In re Stevens (1915), 49 N.S. 289, 25 D.L.R. 113.

There was a statutory provision that every officer, including assessors, should hold office until death or resignation, but that they might be dismissed from office for good cause by a two-thirds vote of the whole council at a meeting called to consider the question.

In Nova Scotia a town solicitor holds office during good behaviour, and cannot, therefore, be dismissed by the council unless due cause is alleged and shewn, and a dismissal is subject to review by a Judge in a summary manner: Chesley v. Lunenburg (1916), 28 D.L.R. 571.

The dismissal from office of the secretary-treasurer of a municipal corporation results from the adoption by the council of a resolution appointing another person to the office and another resolution directing the retired officer to prepare his official statement and the fact that he has abstained since the passing of the resolutions from acting as secretary-treasurer and attending the meetings of the council: Coteau Landing v. Filiatrault (1895), Q.R. 7 S.C. 407.

A town council may dismiss its officers without notice and without cause (R.S.S. 1909, c. 86, s. 126): Newby v. Brownlee (1916), 9 S.L.R. 207, 27 D.L.R. 509, 34 W.L.R. 278, 10 W.W.R. 249.

Gratuities.

247. A council may grant to any officer who has been in the service of the corporation for at least twenty years, and, who, while in such service, has become incapable, through illness or old age, of efficiently discharging the duties of his office, a sum not exceeding the aggregate of his salary or other remuneration for the next preceding three years of his service, as a gratuity upon his ceasing to hold the office. 3-4 Geo. V. c. 43, s. 247.

A pension to a retired stipendiary magistrate payable out of the revenues of a municipal corporation may be made available for the payment of his debts by appropriate legal proceedings: Imperial Bank v. Motton (1897), 29 N.S. 368.

INVESTIGATION OF CHARGES OF MALFEASANCE, ETC., OR JUDICIAL INQUIRY IN RELATION TO MUNICIPAL MATTERS.

Investigation by County Judge of charges of malfeasance.

248.—(1) Where the council of a municipality passes a resolution requesting a Judge of the County or District Court of the county or district in which the municipality is situate to investigate any matter relating to a supposed malfeasance, or breach of trust, or other misconduct on the part of a member of the council, or an officer, or a servant of the corporation, or of any person having a contract with it, in regard to the duties or obligations of the member, officer, servant, or other person, to the corporation, or to inquire into or concerning any matter connected with the good government of the municipality, or the conduct of any part of its public business, the Judge shall make the inquiry, and shall for that purpose have all the powers which may be conferred upon Commissioners under *The Public Inquiries Act*, and he shall, with all convenient speed, report to the council the result of the inquiry and the evidence taken.

Rev. Stat. c. 18.

This subsection was first extended to servants by 3 Edw. VII. c. 18, s. 69 (1).

The Judge does not act judicially in holding the inquiry. He is in no sense a Court and has not power to pronounce judgment imposing any legal duty or obligation on any person, and he is not, therefore, subject to control by prohibition: In re Godson and Toronto (1889), 16 A.R. 452, (1890), 18 S.C.R. 36.

It had been held by Robertson, J., in In re Godson and Toronto (1888), 16 O.R. 275, that prohibition would lie, and he expressed the opinion that if the Judge, in the course of his investigation, took evidence in the United States, "any oath administered by him would have no legal significance, and any false statement by a person sworn before him under such circumstances would not have attached to it the consequences of perjury": p. 292.

The Godson case was followed in In re Thomas' License (1895), 26 O.R. 448, and in Chambers v. Winchester (1907), 15 O.L.R. 316.

There is power under this section to order an inquiry into an election for members of the council and board of education at which it is alleged that corrupt practices had prevailed, the election being a "matter connected with the good government of the municipality" within the meaning of the section: Lane v. Toronto (1904), 7 O.L.R. 423.

The Court will not, in an action by a ratepayer for an injunction, interfere with the conduct of the inquiry by the Judge in regard to the admission or rejection of evidence, the examination of ballot papers, the compelling of witnesses to answer incriminating questions, etc.: *Ib.*

In In re Berlin (1914), 33 O.L.R. 73, 22 D.L.R. 296, it was held that, as affairs relating to the police force are placed in the hands of Police Commissioners, whose authority with respect to matters over which they have jurisdiction is paramount, there was no power in the council under this section to direct an inquiry into charges of misconduct and lack of harmony in the police force of the city.

The inquiry should be conducted as in open Court, but in exceptional cases "the Commissioner will exercise a wise discretion in excluding witnesses (while one is being examined) or in excluding the general public where the disclosures are of a nature unfit for publication, but evidence should not be taken behind the back of the person chiefly interested": per Boyd, C., in Chambers v. Winchester (supra), p. 317.

Fees payable to Judge. Rev. Stat. c. 56.

(2) The Judge shall be paid by the corporation the same fees as he would be entitled to if the inquiry had been made by him as a referee under *The Judicature Act.*

Section 66 (3) of the Judicature Act, R.S.O., c. 56, provides that the fees of an official referee are to be the same as are payable to a Local Master, viz., $1.50 per hour.

Engaging counsel.

(3) The council may engage and pay counsel to represent the corporation, and may pay all proper witness fees to persons summoned to give evidence at the instance of the corporation, and any person charged with malfeasance, breach of trust, or other misconduct, or whose conduct is called in question on such inves-

tigation or inquiry, may be represented by counsel. 3-4 Geo. V. c. 43, s. 248.

This subsection was first enacted by 3 Edw. VII. c. 18, s. 69 (2). Before this amendment there was no authority for paying compensation to witnesses: East Nissouri v. Horseman (1858), 16 U.C.R. 556, 567.

It was held in In re Macdonald (1894), 10 Man. L.R. 294, that it is not within the power of a municipal council to provide for the payment of counsel and witnesses in attending upon a Royal Commission of Inquiry into the financial affairs of the corporation, but it may properly authorize the employment of counsel and payment of other expenses in opposing a bill to abolish the corporation and apportion its territory among adjoining municipalities.

In the later case of Manning v. Winnipeg (1911), 21 Man. L.R. 203, 15 W.L.R. 33, Mathers, C.J., appears to have been of a different opinion as to the power of a municipal council to employ and pay counsel to represent the corporation before a commission appointed under a provision similar to s. 248 (1) to investigate as to the cost of a municipal work, but he held that the plaintiff was not entitled to recover because a by-law appointing him to act had not been passed. This judgment was affirmed by the Court of Appeal (1911), 21 Man. L.R. 203, 17 W.L.R. 329, but it was not decided whether or not the council had power to employ and pay counsel. That it had not the power would appear to have been the opinion of some of the Judges.

A municipal corporation is not liable for the fees of counsel not retained by it merely because they represented some of the officers and citizens before a Royal Inquiry Commission: Desaulniers v. Montreal (1913), Q.R. 24 K.B. 135.

PART IX.

GENERAL PROVISIONS APPLICABLE TO ALL MUNICIPALITIES.

JURISDICTION—NATURE AND EXTENT.

Jurisdiction of councils.

249.—(1) Except where otherwise provided, the jurisdiction of every council shall be confined to the municipality which it represents and its powers shall be exercised by by-law.

The only other province in which it is enacted that, except where otherwise provided, the powers of the council shall be exercised by by-law, is Manitoba: R.S. Man., 1913, c. 133, s. 327.

In British Columbia certain named powers are required to be exercised by by-law: R.S.B.C., 1911, c. 170, s. 53. Others may be exercised by by-law or resolution: Ib. s. 186; and others by resolution: Ib. s. 190.

In Quebec certain powers may be exercised by resolution. The Municipal Code, arts. 355 to 358 (inclusive), and provision is made by arts. 390 to 413 and 415 to 429 (inclusive) that by-laws may be passed for certain specified purposes, and by art. 413 every local corporation is empowered to pass "in the interest of the inhabitants of the municipality any other by-law for any object of a local municipal nature only, not specially provided for by this Code."

A corporation may have a seal, but the use of it is not obligatory: art. 5 (6).

"Shall be confined to the municipality which it represents."—This provision, but for the exception, would prevent a corporation from acquiring land situate beyond the limits of the municipality. Power to do that is conferred in various Acts and by certain provisions of this Act. It is conferred by s. 198, s. 379, par. 4; s. 398, pars. 7, 11, 32, 33; s. 399, par. 46; s. 400, par. 10; s. 411, par. 6; s. 447, s. 483, pars. 9, 10.

"Shall be exercised by by-law."—For cases as to contracts, see notes to s. 8.

It will be convenient to deal here with by-laws generally, where a by-law is necessary and where it is not, and with cases in which by-laws have been attacked on various grounds.

The cases are grouped under what is hoped will be found to be appropriate headings. Though some of the cases mentioned under one heading fall also under another or other headings, it has been thought unnecessary to place them under more than one heading as the notes show in each case all the questions dealt with and how they were dealt with.

CONSTITUTIONALITY OF LEGISLATION UNDER THE AUTHORITY OF WHICH BY-LAWS WERE PASSED.

A by-law of the London County Council provided that "no person shall frequent or use any street or other public place on behalf of himself or of any other person for the purpose of bookmaking or betting or wagering or agreeing to bet or wager with any person or paying or receiving or selling bets" was within the powers conferred by s. 23 of The Municipal Corporations Act to make by-laws for the "good rule and government" of the county, and was not repugnant to s. 23 of The Metropolitan Streets Act, 1867, and was reasonable and therefore valid: Thomas v. Sutters, L.R. (1900), 1 Ch. 10, 16 T.L.R. 7.

It was argued unsuccessfully that, as by The Metropolitan Streets Act, 1867, Parliament had directed its attention to betting in streets and had regulated it in the mode which it was thought best, there ought to be no further by-law on that subject except possibly one for the better carrying out of that provision, and it was pointed out that the whole purpose of the Act was to regulate street traffic in the metropolis, and that this did not prevent the county council from regulating their streets with a reference to another matter—betting without obstruction.

ONTARIO.

Formerly the councils of cities, towns and villages had power to pass by-laws "for regulating the assize of bread" except "bread or the sale of it in loaves to which are attached labels shewing the weight to be not more than the actual weight of the same": 3 Edw. VII. c. 19, s. 583, par. 1; and it was held that that provision was not *ultra vires* as creating a criminal offence or otherwise: In re Nasmith and Toronto (1883), 2 O.R. 192; Rex. v. Chisholm (1907), 14 O.L.R. 178.

That Act was, however, repealed by 8 Edw. VII. c. 48, s. 10, and The Bread Sales Act, R.S.O. c. 224, now regulates the assize of bread, but the power is conferred by the Municipal Acts of other provinces.

In Reg. v. Wason (1890), 17 A.R. 221, it was held, reversing (1889), 17 O.R. 58, that the "Act to provide against frauds in the supplying of milk to cheese or butter manufactories," 51 Vict. c. 32 (Ont.), though penal in its nature, does not deal with criminal law within the meaning of s. 91 (27) of The British North America Act, but merely protects private rights, and is *intra vires*.

In Rex v. Horning (1904), 8 O.L.R. 215, it was held that the "Act to Prevent the Fraudulent Entry of Horses at Exhibitions," R.S.O., 1897, c. 254, now R.S.O. c. 226, was *intra vires* of a provincial legislature.

In In re The Bread Sales Act (1911), 23 O.L.R. 238, 245, Meredith, J.A., expressed a doubt as to the power of a provincial legislature to pass the Act.

The exclusive legislative authority conferred by s. 91 of The British North America Act upon the Parliament of Canada in relation to the criminal law, including the procedure in criminal matters, does not deprive the provincial legislatures of the right to legislate for the better protection of the rights of property by preventing fraud in relation to contracts or dealings in a particular business or trade: per Moss, C.J.O., in Rex v. Lee (1911), 23 O.L.R. 490, 493-4.

In In re McCoubrey and Toronto (1913), 9 D.L.R. 84, 4 O.W.N. 573, 23 O.W.R. 553, it was held, following Beauvois v. Montreal (infra), that The Ontario Shops Regulation Act was *intra vires* of the Ontario legislature.

ALBERTA.

In In re Brown and Calgary (1906), 5 W.L.R. 576, it was held that a Shop Regulation Act is not *ultra vires* of a provincial legislature.

In Upton v. Brown (1912), 3 W.W.R. 626, 21 Can. Cr. Cas. 190, it was held that a municipal by-law passed under the authority of a provincial Act prohibiting disorderly houses and providing for the punishment of the inmates and frequenters of them was *ultra vires* as being legislation on criminal law so far as it attempted to create criminal offences and provide punishments for them.

The mere fact that a by-law passed under the authority of provincial legislation making it compulsory for bakers to deliver bread in wrappers incidentally affects the mode in which persons engaged in trade and commerce shall supply containers or wrappers for certain classes of goods does not make the subject matter one of trade and commerce, which is placed exclusively under federal jurisdiction by The British North America Act: In re Shelly (1913), 10 D.L.R. 666, 24 W.L.R. 285, 4 W.W.R. 741.

BRITISH COLUMBIA.

A provincial statute which confers upon a municipal corporation power to issue licenses for the purposes following and to levy and collect by means of such licenses the amounts following "from every person who, either on his own behalf or as agent for another or others, sells, solicits or takes orders for the sale by retail of goods, wares or merchandise to be supplied or furnished by any person or firm doing business outside the province, and not having a permanent and licensed place of business within the province, of a sum not exceeding fifty dollars ($50) for every six months," is not *ultra vires* of a provincial legislature, but the imposition of the license tax is within the authority of provincial legislatures under s. 92 (16) of The British North America Act.

A by-law passed under the authority of this statute, which followed the language of it except that the words "permanent or licensed place of business" were substituted for "permanent and licensed place of business," was held to be valid, as the word "and" in the statute should be construed "or": Poole v. Victoria (1892), 2 B.C.R. 271.

Where a statute creates offences and provides the necessary machinery for carrying out its provisions, a by-law to put it in force is unnecessary and bad: Hayes v. Thompson (1902), 9 B.C.R. 249.

It was held in Rex v. Waldon (1914), 19 B.C.R. 539, 14 D.L.R. 893, 26 W.L.R. 316, 22 Can. Cr. Cas. 122, 5 W.W.R. 1209, affirmed (1914), 19 B.C.R. 539, 18 D.L.R. 109, 28 W.L.R. 46, 22 Can. Cr. Cas. 405, 50 C.L.J. 621, 6 W.W.R. 850, that Parliament alone can delegate power to local bodies to adopt by by-law criminal laws to meet local ideas, and that, therefore, subsections 129 and 130 of s. 53 of The Municipal Act of British Columbia, R.S.B.C. 1911, c. 170, authorizing municipal councils to pass by-laws "for the regulating of public morals, including the observance of the Lord's Day, commonly called Sunday," are *ultra vires*, and a by-law passed pursuant to them is of no effect.

MANITOBA.

A "gambling house" is the same thing as a "common gaming house."

Keeping a gambling house is an offence against the general criminal law, consequently it can be dealt with only by the Parliament of Canada, and cannot be made an offence by a provincial Act or by a municipal by-law passed under the authority of such an Act.

Reg. v. Shaw (1891), 7 Man. L.R. 518.

The provisions of The Manitoba Shops Regulations Act, R.S.M. 1902, c. 156, are *intra vires* of the provincial legislature under s. 92 of The British North America Act as dealing with a matter of a merely local and private nature, and not interfering with the regulation of trade and commerce assigned to the Dominion Parliament to as great an extent as the legislation in question in Ontario v. Attorney-General of Canada, L.R. (1896) A.C. 348, 12 T.L.R. 388, and Attorney-General of Manitoba v. Manitoba License Holders' Association, L.R. (1902), A.C. 73, 18 T.L.R. 94.

Rex v. Schuster, Stark v. Schuster (1904), 14 Man. L.R. 672, 8 Can. Cr. Cas. 354.

A municipal by-law, which purports to provide a penalty for the identical offence which is already subject to a penalty under a provision of the Criminal law, is *ultra vires:* Rex v. Laughton (1912), 22 Man. L.R. 520, 6 D.L.R. 47, 22 W.L.R. 199.

This was the case of the rescue of cattle from the poundmaster, made a criminal offence by 6 and 7 Vict. c. 30 (Imp.), which by force of s. 12 of The Criminal Code (Can.) is part of the criminal law of Manitoba.

NEW BRUNSWICK.

The sale of cigars on Sunday may be prohibited by an Act of a provincial legislature or by a municipal by-law; it is a mere police by-law, the violation of which does not constitute a criminal offence: In re Green (1900), 35 N.B. 137, 4 Can. Cr. Cas. 182.

An enactment authorizing the making of by-laws regulating the assize of bread in a municipality is not *ultra vires*: Rex v. Kay, Ex parte Le Blanc (1909), 39 N.B. 278, 7 E.L.R. 209.

NOVA SCOTIA.

Where a municipal council passes a by-law with respect to loitering in the streets, in which the provisions of the criminal law are duplicated, but a lesser penalty is imposed in proceedings before a magistrate for the offence, he will be governed by the explicit terms of the statute rather than by the by-law: Rex v. Sweeny (1910), 44 N.S. 359, 8 E.L.R. 16.

In In re McNutt (1912), 47 S.C.R. 259, it was held that a trial and conviction for keeping liquor for sale contrary to the provisions of The "Nova Scotia Temperance Act ' are proceedings on a criminal charge.

QUEBEC.

Within the limits prescribed by the Constitution, the authority of the Parliament and of the legislature is absolute, and their power to impose taxation is not restricted by the rules, the mode, and the procedure to which municipal corporations are subject. A provincial legislature has, therefore, the right to impose taxation upon all callings exercised in a municipality without naming and specifying them: Quebec v. Grand Trunk Railway Company (1898), Q.R. 8 Q.B. 246, affirmed (1899) 30 S.C.R. 73.

A provincial statute which authorizes a municipal corporation to impose a tax on laundries is within the competence of the legislature. A by-law which imposes this tax and provides a penalty for every infraction of the by-law, without mentioning costs, and directs that, in default of payment of the fine, again not mentioning costs, the delinquent shall be imprisoned for two months, such imprisonment to cease on payment of the fine *and the costs*, does not authorize the condemnation of the delinquent to pay the costs or the demand that he pay them with the fine to avoid imprisonment or to obtain his release.

Where there is a statutory provision that the imprisonment of a delinquent shall cease as soon as the fine is paid, without mention of costs, payment of costs cannot be exacted as a condition of release from prison.

Lee v. DeMontigny (1899), Q.R. 15 S.C. 607.

It was held in Wilder v. Montreal (1905), Q.R. 14 K.B. 139, that a provincial legislature cannot confer upon municipal councils authority to pass by-laws prohibiting classes of trade not in themselves contrary to good morals or public policy, and that a provincial legislature has no constitutional authority to permit the prohibition of the business of furnishing trading stamps to merchants to be distributed by them to their customers, and which entitle the holders to prizes to be given by the person carrying on the business, such a business being neither immoral nor contrary to public policy.

This is now a criminal offence, made so by 4-5 Edw. VII. c. 9, s. 1, now s. 505 of the Criminal Code, R.S.C. c. 146, and the distribution of trading stamps by the person who receives them from the issuer of them is also made a criminal offence: s. 506.

See also the Criminal Code, s. 335, cl. (*u*), for a definition of "trading stamps," and Rex v. Pollock (1916), 36 O.L.R. 7, 28 D.L.R. 545 (the case of a conviction under s. *505*).

It was held in Beauvais v. Montreal (1906), Q.R. 30 S.C. 427, affirmed (1908) Q.R. 17 K.B. 420, 4 E.L.R. 551, that a by-law of a municipal council requiring shops to be closed at stated hours is not founded on or authorized by the common law power vested in municipal councils to make police or other regulations for good government and the maintenance of public order, and that such a by-law is not authorized by the good government clause of the charter of the city of Montreal (s. 140), and it was also held that a provincial legislature cannot confer power to pass by-laws for the closing of shops during stated hours.

Authority to enact such legislation does not fall under any of the heads enumerated in s. 92 of The British North America Act, and is, therefore, *ultra vires*.

This case was reversed by the Supreme Court of Canada (1909), 42 S.C.R. 211, by which it was held that the Act was *intra vires*.

A by-law of a municipal council authorizing the sale on Sunday of fruits or cigars does not fall under the criminal law of Canada: Kennedy v. Couillard (1910), 17 Can. Cr. Cas. 239.

Ouimet v. Bazin (1911), 46 S.C.R. 502, 3 D.L.R. 593, 20 Can. Cr. Cas., 458 in which it was held, reversing (1910) Q.R. 20 K.B. 416, that in the "Act respecting the observance of Sunday," 7 Edw. VII. c. 42, as amended by 9 Edw. VII. c. 51, the provisions prohibiting theatrical performances on Sunday are not of the character of local, municipal or police regulations, and that on the proper construction of the legislation, treated as a whole, they purport to create offences against criminal law, and, consequently, are not, as determined in Attorney-General for Ontario v. The Hamilton Street Railway Company, L.R. (1903), A.C. 524, 19 T.L.R. 612, within the legislative competence of a provincial legislature under The British North America Act, 1867.

An Act of the legislature of the late Province of Canada, which conferred special powers upon a municipal council to pass by-laws "for the better observance of the Sabbath," not having been repealed by Dominion legislation since Confederation, a by-law of the council prohibiting a tradesman from selling goods on Sunday, which was a mere continuation of a by-law passed prior to Confederation, is not *ultra vires:* Bishinski v. Montreal (1915), Q.R. 47 S.C. 176, 28 D.L.R. 381.

It was held in Dupuis v. Blouin (1916), 26 D.L.R. 127, that art. 4466, R.S.Q., preserves, subject to certain restrictions, all such liberties as are recognized by the custom of the Province of Quebec as to Sunday trading, and on a prosecution in that province under The Lord's Day Act, R.S.C. 1906,

c. 153, for selling by retail fruits and tobacco on a Sunday at a place where there is no municipal by-law prohibiting such sales, it may be shewn by parol evidence in defence of the charge that such sales of which there is no express prohibition in either federal or provincial Acts are customary in the Province of Quebec, and, therefore, lawful under the exception contained in the federal Act of matters provided in any provincial Act or law.

Saskatchewan.

The provisions of 2 Geo. V. c. 17 (Sask.) containing a prohibition against the employment of white female labour in places of business and amusement kept or managed by Chinese, sanctioned by fine and imprisonment, are *intra vires* of the provincial legislature: Rex v. Quong Wing (1913), 6 S.L.R. 242, 12 D.L.R. 656, 24 W.L.R. 913, 21 Can. Cr. Cas. 326, 4 W.W.R. 1135, (1914) 49 S.C.R. 440, 18 D.L.R. 121, 6 W.W.R. 270, 23 Can. Cr. Cas. 113.

Territories.

In Reg. v. Keefe (1890), 1 Terr. L.R. 280, it was held that the evident purpose of R.O. (1888) c. 38, s. 5, which enacts that: "Every description of gaming and all playing of faro, cards, dice, or other game of chance, with betting or wagers for or stakes of money, or other things of value, and all betting and wagering on any such games of chance, is strictly forbidden in the Territories, and any person convicted before a justice of the peace, in a summary way, of playing at, or allowing to be played at on his premises or assisting, or being engaged in any way in any description of gaming as aforesaid, shall be liable to a fine for every such offence, not exceeding one hundred dollars, with costs of prosecution, and on non-payment of such fine and costs forthwith after conviction, to be imprisoned for any term not exceeding three months," was to create an offence in the interest of public morals, and not for the protection of private rights, and that it was, therefore, *ultra vires* of a provincial legislature.

An ordinance empowering a municipal council to pass by-laws "for controlling, regulating and licensing . . . insurance companies, offices and agents . . . and collecting license fees for same" is *intra vires* the legislative assembly of the Territories: English v. O'Neill (1899), 4 Terr. L.R. 74.

Acts of de facto bodies.

In this country (*i.e.*, the United States of America) the doctrine is everywhere declared that the acts of *de facto* officers, as distinguished from the acts of mere usurpers, are valid, and the principle extends not only to municipal officers generally, but also to those composing the council or legislative or governing body of a municipal corporation: Dillon on Municipal Corporations, 5th ed., s. 518.

See also Brice on Ultra Vires, 3rd ed., pp. 613-4.

In Quebec this is expressly provided by art. 78 of the New Municipal Code, which enacts that:—

"No vote given by a person illegally holding office as member of a council and no act in which in such capacity he has participated can be set aside with respect to persons who have acted in good faith solely by reason of the illegal exercise of such office."

The true meaning of art. 120 of the Municipal Code, now art. 78, which enacts that no vote given by a person filling illegally the office of member of the council and no act in which he participates in such election can be set aside solely by reason of the illegal exercise of such vote, is that if the corporate body or the individual corporators—the mandators of the municipal council—allow a man to act as councillor who is not legally such, it is only right that they should be bound by his acts in so far as they affect persons who have in good faith thought him to be the rightful holder of the office, but the article does not validate for all purposes and as respects everyone the official acts of a councillor whose nomination was publicly known to be illegal: Lacasse v. Labonte (1896), Q.R. 10 S.C. 97, 104.

In Martin v. St. Catharines (1909), 13 O.W.R. 559, 560, Anglin, J., expressed the opinion that the Court should not enjoin the acts of a *de facto* council "though the legality of the election is questioned in pending proceedings."

Construction of by-laws.

Where a by-law is capable of two constructions, one of which would make it invalid and the other good, the latter construction will prevail: Halsbury's Laws of England, vol. 8, par. 762, and cases there cited.

Ontario.

Want of clearness of expression in or difficulty in construing or applying the provisions of a by-law does not afford ground for quashing it for illegality: In re Smith and Toronto (1860), 10 U.C.C.P. 225, 228.

An early closing by-law providing that certain shops should be closed at a certain hour every day "excepting . . . the days during which the Central Canada Exhibition is being held" is not void for uncertainty, because the days on which the Exhibition is to be held are fixed by by-law of the Association under statutory authority: Reg. v. McMillan (1896), 28 O.R. 172.

It is a general principle of legislation, at which superior legislatures aim and by which inferior bodies clothed with legislative powers, such as boards of directors, municipal councils, etc., are bound, that all laws shall be definite in form and equal and uniform in operation, in order that the subject may not fall into legislative traps or be made the victim of caprice or of favouritism —in other words, he must be able to look with reasonable effect before he leaps: per Garrow, J.A., in In re Good v. Jacob Y. Shantz, Son & Company (1911), 23 O.L.R. 544, 552, citing Jonas v. Gilbert (1881), 5 S.C.R. 356; Reg. v. Flory (1889), 17 O.R. 715.

ALBERTA.

In Brown v. Calgary (1906), 5 W.L.R. 576, a by-law passed under the authority of an Early Closing Act excepted from the days on which the shops were to be closed New Year's Day, Good Friday, Arbor Day, Victoria Day, Christmas Day, the day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Dominion Day, Labour Day, Thanksgiving Day, and any other day proclaimed by proper authority a public holiday within the municipality. It was objected that the by-law was invalid because several of the excepted days were not fixed dates, but it was held that the objection was not well taken. The Court distinguished In re Cloutier (1896), 11 Man. L.R. 220, because in that case the excepted days were to be fixed by the Exhibition Board, while in the case under consideration the days were to be fixed by proclamation by competent authority.

By the Liquor License Amendment Act of 1907, s. 42 (Alta.), the fee payable to the province in respect to a liquor license in the city of Calgary was raised from $200 to $400. The Act was passed on the 15th of March, 1907, but did not come into force until the first day of July following. In anticipation of its coming into force, the municipal council of the city passed a by-law on the 3rd of June, 1907, increasing the liquor license fee payable to the corporation from $200 to $400, and before the 1st of July insisted on payment of $400 before granting a certificate that the license had been paid for, for the year ending June 30th, 1908. Held, that the by-law was *intra vires*, and was authorized by a provision of the Interpretation Act somewhat similar to R.S.O. c. 1, s. 6 (Ont.): Stephens v. Calgary (1909), 2 A.L.R. 296.

BRITISH COLUMBIA.

Where a by-law contains a clerical error, which renders it, when read literally, senseless, the by-law should be read so as to give it a sensible meaning and that which was intended "unless the language used is absolutely unmanageable": Esquimalt Water Works Co. v. Victoria (1904), 10 B.C.R. 193.

In this case, by reading certain words of the by-law as a parenthetical expression, the by-law had a sensible meaning.

The effect of reprinting a municipal by-law was to alter the position of the last word in the first line of a section—a word occurring five times in the section.

An amendment was subsequently passed intending the insertion of another word before the word so changed in position. It was held that the amendment should be placed and read in the position to which only it could sensibly relate.

Victoria v. Belyea (1906-7), 13 B.C.R. 5, 5 W.L.R. 161, 428.

MANITOBA.

A by-law requiring boot and shoe shops to close at a specified hour every day except, among other days, the days on which the Exhibition of the

Winnipeg Industrial Exhibition Association is being held is bad for uncertainty, and is also *ultra vires* because it delegates the power conferred on the council to the Association: In re Cloutier (1896), 11 Man. L.R. 220.

QUEBEC.

A by-law, sanctioned by the electors, for borrowing money for the construction of roads and drains, not stating in detail the nature and extent of the works or the division of the loan between the two classes of construction indicated, is not open to objection for want of precision where the council, a few days after its passage, had passed a general by-law for the construction of roads and drains with all necessary details and precision. The earlier by-law formed one with the general by-law, which was only the execution of the former: Hadley v. St. Paul (1897), Q.R. 13 S.C. 88.

The word "person" in a municipal by-law which enacts that no person shall cause any excavation to be made in the streets without the permission in writing of the Council and payment of a fee does not include a member of the council acting within his administrative rights, and the word "excavation" does not include the removal and replacing of snow by him to obtain information to guide him in the performance of his municipal duties: Therrien v. St. Paul (1902), Q.R. 23 S.C. 248.

The corporation of a town has power to borrow money and issue debentures for the repayment of it only for the specified matters provided by statute, and, therefore, a resolution by a town council which has authorized improvements without specifying the cost and the purchase and installation of an engine for $10,000, providing for a loan of $50,000, "to cover these disbursements and if there be a surplus over any matter of public interest provided for by statute," does not sufficiently indicate the object of the use to be made of the sum, and for that reason is a nullity: Ménard v. Bordeaux (1908), Q.R. 34 S.C. 335, affirmed (1909) Q.R. 37, S.C. 259.

An action will not lie to annul a *proces-verbal* on the ground that clauses in it relating to some of the work to be performed are drawn in obscure or even unintelligible language. The proper course for the persons interested is to have the instrument amended and its meaning made clear in the manner provided by law: Vinet v. St. Louis de Gonzague (1909), Q.R. 19 K.B. 222.

SASKATCHEWAN.

In Saskatchewan the Municipal Act authorizes a council to pass by-laws to regulate the assize of bread, and it has been decided that this power means to make by-laws regulating the standard of quantity or measurement of bread, and that a by-law providing that no person should sell or dispose of any loaf of any size or weight but of two or four pounds is not unreasonable as prohibiting the sale of a loaf weighing more than the standard, because it is evident that the evil which the legislature intended to remedy is the sale of bread under weight, and not bread weighing more than the standard, and the enactment should be so construed: Harwood v. Williamson (No. 2) (1908), 1 S.L.R. 66.

BY-LAWS RESTRICTING COMMON LAW RIGHTS AS TO TRADING, ETC.

It is settled by numerous authorities that a by-law restricting the carrying on of a lawful business or calling or the doing of an otherwise lawful act is to be strictly construed: In re Glover and Sam Kee (1914), 20 B.C.R. 219, 22 Can. Cr. Cas. 297, 27 W.L.R. 886, 5 W.W.R. 1276.

But through all these cases the general principle may be traced that a municipal power of regulation or of making by-laws for good government without express words of prohibition does not authorize the making it unlawful to carry on a lawful trade in a lawful manner: per Lord Davey in Toronto v. Virgo, L.R. (1896) A.C. 88, 93-4, 12 T.L.R. 46.

Merritt v. Toronto (1895), 22 A.R. 205, 210, in which Osler, J..A, referred to the strict construction which should be given to by-laws which interfere with the carrying on of a legitimate business.

See also the observations of Maclennan, J.A., at p. 213.

In re Taylor and Winnipeg (1896), 11 Man. L.R. 420, in which it was held that by-laws for licensing, inspecting, and regulating of dairies and vendors of milk and for preventing the sale or use of milk or other food products until compliance with regulations was invalid, and that all such by-laws should be construed strictly and that any ambiguity or doubt as to the extent of the powers conferred on municipal councils to make by-laws is to be determined in favour of the general public as against the grantee of the power, especially where the by-law affects the rights of liberty or property of a citizen.

It was also held that the following provisions of the by-law were objectionable and invalid:—

(1) The by-law being so worded that some carriers of milk from points outside the city, as railway companies, might be required to procure licenses as vendors of milk, or otherwise they would be subject to the penalties imposed.

(2) The provision that in case any animal is found to be affected with tubercular disease, it is to be separated from all others, and kept apart until it is proved by inspection that the animal has recovered, and, in the meantime, the owner is prevented from selling the milk from the other cows in the dairy until a further inspection shows that they have not contracted the disease. This further inspection is to be made not less than two weeks, nor more than eight weeks, after the first, which puts it in the power of the inspector arbitrarily to keep the dairy closed for eight weeks.

(3) The provision for an inspection of dairies and a report as to whether the regulations have been complied with or not, but a license is to be issued only if the Market, License and Health Committee gives no contrary order to the health officer, which puts it in the power of that committee arbitrarily to deny a license even when there is a favourable report.

(4) The provision that in no case where the regulations have not been complied with shall the health officer issue a license, and the provision that

the council may override all that and direct a license to issue, which opens a wide door to favouritism, and makes the by-law unequal in its provisions.

(5) The imposition of a special tax, charging so much for licenses and a further fee of fifty cents for every cow contrary to the provisions of ss. 333 and 334 of the Municipal Act.

(6) The provision that if a licensee adds any cow to his stable, he must bring it to the inspector's stable to be inspected, and pay a fee of fifty cents, whether he intends to sell her milk or not.

(7) The provision that the inspector may inspect any cows or cattle in the city, whether the owner is or is not selling milk or any other food products of these cows or cattle, and may collect from the owner a fee of fifty cents per head for such inspection, which is *ultra vires* of the Act.

The powers of a municipal council to pass by-laws restricting common law rights can only be found in language clear and distinct: Doble v. Canadian Northern Railway Company (1916), 27 D.L.R. 115, 34 W.L.R. 298, 10 W.W.R. 427 (Man.).

REPEAL AND ABROGATION OF BY-LAWS.

BRITISH COLUMBIA.

A by-law of a municipal council cannot be altered by a mere resolution of the council: Victoria v. Meston (1905), 11 B.C.R. 341, 2 W.L.R. 384.

This is expressly provided by art. 370 of the new Quebec Municipal Code.

QUEBEC.

The repeal of an enactment which empowered municipal councils to levy a tax by by-law abrogates *ipso facto* any by-law passed in the exercise of the power conferred, and sums paid under such a by-law after the repeal of the enabling Act may be recovered by action against the corporation: Royal Insurance Company v. Montreal (1906), Q.R. 29 S.C. 161.

A similar conclusion as to the effect of the repeal was reached in Reg. v. Hiscox (1879), 44 U.C.R. 214.

BY-LAWS GOOD IN PART AND BAD IN PART.

A by-law which is void in part is void altogether, except when the void part can be severed from that which is good, and the latter can be enforced independently: Halsbury's Laws of England, vol. 8, par. 762, and cases there cited.

BRITISH COLUMBIA.

A by-law may be good in part and bad in part, but the part that is good must be clearly distinguished from the part that is bad, so that, if the invalid portion is eliminated, there will still remain a perfect and complete by-law capable of being enforced: Reg. v. Jim Sing (1895), 4 B.C.R. 338.

Where a by-law provides for one general scheme combining two purposes, as to one of which the assent of the electors is necessary and has not been obtained, unless the one as to which the assent is not necessary can be segregated from and given effect to independently of the other, the by-law must fail as a whole: Meldrum v. Black (1916), 27 D.L.R. 193, 34 W.L.R. 314, 10 W.W.R. 519.

Quebec.

A by-law or resolution may be valid in part and void as to the rest if the valid part has no connection with the part which is void, otherwise the nullity of one part makes the whole void: Brunet v. Montreal (1913), Q.R. 22 K.B. 188.

Right to repair and improve highways without by-law.

A landowner has, by common law, no vested right to the continuance of a highway at its existing level: Pratt v. Stratford (1887), 14 O.R. 260, 263.

A corporation can, without passing a by-law, exercise and perform its statutable powers and duties in repairing highways and bridges and in erecting a new bridge instead of an old and unsafe one, and, in doing so, may raise the level of the highway for the purpose of providing approaches to the bridge, and, where lands are injuriously affected by what is done, the owner cannot maintain an action, but must seek compensation under the Act: Pratt v. Stratford (1888), 16 A.R. 5; Foster v. Reno (1910), 22 O.L.R. 413, 416; Shawinigan v. Shawinigan (1912), 45 S.C.R. 585, per Idington, J., at p. 603, 4 D.L.R. 502, 10 E.L.R. 521.

In Billings v. Ottawa and Carleton (1916), 10 O.W.N. 450, it was held by Sutherland, J., that the defendants were liable in trespass to the owner of land upon which they, in replacing a bridge, had encroached besides interfering with the access to the land; that the work could not be considered a work of repair which could be undertaken "without a preliminary by-law" and that the landowner was not confined to his remedy under sec. 325, and judgment was given accordingly for the recovery of damages for the trespass, but the judgment was reversed by a Divisional Court (1916), 11 O.W.N. 148, by which it was held that the corporations must pay for any land taken beyond the 66 feet line (*i.e.*, beyond the limits of the highway), and a reference was directed to the proper local officer to fix the compensation if the parties were unable to agree as to it, and it was also held that the remedy of the plaintiff for interference with the access to his land by the work which had been done was to seek compensation under sec. 325.

The alteration of the grade of a highway is not in all cases and under all circumstances a work of repair which may be done without a by-law: Taylor v. Gage (1913), 30 O.L.R. 75, 85, 16 D.L.R. 686, in which case what was said by Macaulay, C.J., in Croft v. Peterborough (1856), 5 U.C.C.P. 35, 45-6, 141, 148-9, 150, followed in Perdue v. Chinguacousy (1865), 25 U.C.R. 61, is referred to as well stating "the line of separation between acts which a municipal corporation may do in the discharge of its duty to keep in repair a highway under the jurisdiction of its council without passing a by-law authorizing them to be done and acts done for the improvement of the highway for which a by-law is necessary."

In the earlier report, Macaulay, C.J., said:—

"I am at present disposed to think it (*i.e.*, the raising of the level of a street several feet higher than it was before) within the general and incidental powers of the defendants to maintain and repair and to improve the public streets of the town placed under their charge, and, in doing so, to raise or lower them as may be found necessary, judicious or convenient for the public use not exceeding what is reasonably requisite and proper. . . ."

And in the later report what he said was:—

"I entertain a strong impression that a by-law ought to have been passed to sanction the acts complained of. If what was done could be regarded as necessary to maintain and keep the road in proper repair and therefore incumbent upon the defendants as a duty cast upon them by the statute . . . I have no doubt it could be justified without a by-law, but if the defendants possess no implied powers . . . but must derive and trace all their powers from the statutes, and the facts do not make a case within 13-14 Vict. c. 15, and 12 Vict. c. 81, s. 60 (1), and other sections formerly mentioned only authorize the municipality to make by-laws for (among other things) raising any road or street without in substantive terms conferring upon them power so to do, I am unable to point out where the legal authority for doing it exists or whence it is derived. . . ." "Raising a long line of a public street in a town is not one of those oft-repeated little things, the frequency and exigencies of which supersede the necessity of formal proceedings, but when serious injury may be thereby inflicted on persons having property and living in houses abutting on such street, it becomes a very grave matter, and the protection of both the public easement and the contiguous properties seems to demand that the powers conferred should be exercised in strict accordance with the statute, and I see no particular difficulty or inconvenience in conforming thereto . . . for, in my present impression, if that be done by the corporation without a by-law which no statute authorizes or directs otherwise than through the medium of a by-law and damage be occasioned to private individuals in respect of their property, I do not see how a Court of law can hold it nevertheless justifiable, however great the damage may be."

It is observed with regard to the latter of these observations that, in the then state of the law, if the alteration of the grade of the highway were lawfully made and the work was done without causing unnecessary injury to property owners, they were without remedy, however much their property may have been injuriously affected. The law in this respect was changed by the Municipal Act of 1873 (36 Vict. c. 48, s. 373), and the property owners are entitled in such a case to compensation under the Act: In re Yeomans and Wellington (1878), 43 U.C.R. 522, (1879) 4 A.R. 301.

In In re Yeomans and Wellington the highway had been raised about four feet to make it level with a bridge, which it was the defendant's duty to build and maintain, and it had also been widened and protected with a railing on both sides, and this had been done without any by-law.

See also Reid v. Hamilton (1854), 5 U.C.C.P. 269, 287, in which Macaulay, C.J., said that his present impression was: "That whenever the acts to be done by the municipality will invade private rights which may be so invaded legally through the medium of by-laws and for which, if not legalized by the statutes creating or the powers conferred upon the corporation, the party injured may maintain an action against the wrongdoer, a by-law is essential to enable the municipality to justify the act unless it can be shown to be a repair of the highway," and Reg. v. Perth (1856), 14 U.C.R. 156, in which the highway had been raised from five to twelve feet under the authority of a by-law, and it was held that a property owner whose land was injuriously affected was not entitled to compensation.

In Ayres v. Windsor (1887), 14 O.R. 682, a pavement was laid as a local improvement, and, in the course of the work, the highway in front of the plaintiff's property was lowered about four feet. The by-law made no provision for this nor was it authorized by any other by-law, and Rose, J., held that the work, being one which the defendant could not have been compelled to do, it was unlawfully done. The only reported cases in which Ayres v. Toronto has been referred to are Pratt v. Stratford (1888), 16 A.R. at p. 10, where Hagarty, C.J., made the observation, "In Ayres v. Corporation of Windsor, 14 O.R. 682, my brother Rose considered that a by-law was necessary," and Taylor v. Gage (supra), where the fact of this observation having been made is mentioned (p. 82).

It is to be observed that by 12 Vict. c. 81, referred to by Macaulay, C.J., power was conferred on townships to pass by-laws "for the opening, constructing, making, levelling, pitching, raising, lowering, gravelling, macadamizing, planking, repairing, planting, improving, preserving and maintaining of any new or existing highway. . . .": s. 31 (10); and this power was by subsequent sections also conferred upon other municipalities.

In the same section the power is given "to pass by-laws for stopping up, pulling down, widening, altering, changing or diverting any such highway. . . ."

It would seem that the latter power had reference to a change in the alignment or course of the highway, and not to changes of the character mentioned in the earlier part of the section. The earlier part of the section does not appear in the present Act, but s. 482, which deals with the powers of councils as to highways, confers upon them power to pass by-laws "for widening, altering or diverting any highway or part of a highway."

If, as has been suggested above, this power has relation only to changes in the alignment or course of the highway, one of the reasons for thinking that a by-law was necessary to authorize an alteration in the grade of a highway in the cases in which it was thought to be necessary no longer exists.

It is submitted that:—

(1) A by-law is not necessary where the grade of a highway is altered in the course of making repairs to it; or,

(2) Where it is altered in the doing of something which it is the duty of the corporation to do;

(3) Where the alteration cannot reasonably be deemed to be a work of repair or is not one that it is the duty of the corporation to make or incidental to the performance of such a duty a by-law is necessary;

(4) Any alteration of the grade that the council may deem to be necessary to make a highway more safe or convenient for public use is a work of repair.

BY-LAWS NOT PASSED IN THE PUBLIC INTEREST.

In re Vashon and East Hawkesbury (1879), 30 U.C.C.P. 194; In re Morton and St. Thomas (1881), 6 A.R. 323; Pells v. Boswell (1885), 8 O.R. 680; In re Pelot and Dover (1902), 1 O.W.R. 792; In re Waterous and Brantford (1903), 2 O.W.R. 897, (1904) 4 O.W.R. 355; In re Knudsen and St. Boniface (1905), 15 Man. L.R. 317, 1 W.L.R. 281; In re Mills and Hamilton (1907), 9 O.W.R. 731; In re Loiselle and Red Deer (1907), 7 W.L.R. 42; and In re Weir and Calgary (1907), 7 W.L.R. 45, are cases in which by-laws for stopping up or altering highways were attacked as not having been passed in the public interest, but to subserve the interests of private persons, and in all of them, except in In re Knudsen and St. Boniface and in In re Mills and Hamilton, the attack was successful.

In re Peck and Galt (1881), 46 U.C.R. 211, in which the by-law to close part of a public park was quashed.

The power of a council having statutory authority to regulate the mode of user of the highways by telephone companies must be exercised in good faith in the interests of the public and the municipality, and not for ulterior purposes, and when not so exercised the by-law will be quashed: Bell Telephone Company v. Owen Sound (1904), 8 O.L.R. 74.

In In re Inglis and Toronto (1905), 9 O.L.R. 562, referred to in note to s. 396, it was held that the fact that the council, in serving the interest of the public, is at the same time serving that of a private person is not an objection to a by-law.

What is or is not in the public interest in the case of stopping up a highway is a matter to be determined by the judgment of the council, and what it determines, if, in reaching its conclusion, the council acts honestly and within the limits of its powers, is not open to review in any Court: Jones v. Tuckersmith (1915), 33 O.L.R. 634, 23 D.L.R. 569.

The fact that benefit will accrue to private persons from the closing of a lane does not affect the validity of the by-law where the council acts in good faith in determining that it is in the public interest that it should be closed: United Buildings Corporation v. Vancouver (1913), 18 B.C.R. 274, 13 D.L.R. 593, 3 W.W.R. 908, 4 W.W.R. 1108, 24 W.L.R. 825, 25 W.L.R. 403, L.R. (1915) A.C. 345, 111 L.T. 693, 83 L.J.P.C. 363, 19 D.L.R. 97, 28 W.L.R. 787, 6 W.W.R. 1335.

In Mongenais v. Rigaud (1897), Q.R. 11 S.C. 348, it was held that a by-law which divided a municipality into quarters was passed without necessity, and was unjust, partial and oppressive, and the by-law was quashed.

The reason for the decision was that there was no motive of general interest for so dividing the municipality, that the by-law was passed in order to favour the majority of the council to the detriment of the minority, whose mandate would not expire until after the elections of the following January, and of controlling by means of the division the general elections which would become necessary, and that the division of the municipality into quarters had the effect of destroying the equality between the electors by assuring the control of the affairs of the council to the representatives of one quarter to the detriment of two others..

BY-LAWS PASSED IN BREACH OF AGREEMENT AND BY-LAWS INTERFERING WITH VESTED RIGHTS.

ONTARIO.

While a by-law prohibiting cabs, carts, express wagons and other vehicles kept for hire to stand upon or in any street while waiting for hire or engagement or while unengaged upon and in the streets except at stands assigned for the purpose was in force, an agreement was made between the municipal corporation and railway companies that part of a street dedicated by one of the railway companies should, at the request of the railway companies, be dedicated for cabs or express wagons, and the council afterwards, without the request of the railway companies, passed a by-law authorizing cabs, carriages and express wagons to stand on the street, and it was held that the by-law, having been passed in breach of the agreement, was illegal, and it was quashed: Canadian Pacific Railway Company v. Toronto (1902), 1 O.W.R. 255.

Under the authority of a by-law passed on the 5th June, 1899, under s. 542 par. 17, R.S.O. 1897, c. 223, and pars. 17*a*, 17*b*, 17*c*, 17*d*, as enacted by 62 Vict. c. 26, s. 34, a council passed a by-law on the 6th July, 1908, granting license and permission to a company to erect a magazine for the storage of gunpowder, etc., the license to be in force for five years and the renewal of it to be wholly in the discretion of the council. The by-law was acted upon by the company, which acquired for the purpose of its business the lease of valuable property and expended in the erection of its magazine over $1,000 and expended other sums amounting to at least

$1,300. On the 12th August, 1908, the council passed a by-law repealing the by-law of the 6th July, and it was held that this by-law was bad, and it was quashed: In re Hamilton Powder Company and Gloucester (1909), 13 O.W.R. 661.

See also, upon the same point, Great Western Ry. Company v. North Cayuga (1873), 23 U.C.C.P. 28, 31; Alexander v. Huntsville (1894), 24 O.R. 665.

An Act authorizing the passing of by-laws to prohibit, regulate and control the location on streets of, among other things, garages to be used for hire or gain, was held not to empower the passing of a by-law which would apply to a garage located before the by-law was passed: Toronto v. Wheeler (1912), 3 O.W.N. 1424, 4 D.L.R. 352, 22 O.W.R. 326.

BRITISH COLUMBIA.

Where, under the authority of a by-law passed by a municipal council, a company has for many years exercised the powers which the by-law purported to grant, the council cannot repeal the by-law: Cunningham v. New Westminster (1912), 18 B.C.R. 188, 14 D.L.R. 918.

UNREASONABLE OR OPPRESSIVE BY-LAWS.

ONTARIO.

In In re Dinnick and McCallum (1912), 26 O.L.R. 551, 5 D.L.R. 843, 22 O.W.R. 546, a by-law which provided that no building should be "built or erected on the lots fronting or abutting on both sides of, Avenue Road" (a residential street) "from St. Clair Avenue to Lonsdale Road within a distance of forty feet from the east and west lines of said road" was held not to be discriminating in its operation or an unreasonable exercise of the powers conferred on municipal councils by s. 541*a*, of 3 Edw. VII. c. 19, as enacted by 4 Edw. VII. c. 22, s. 19, and a mandamus for the issue of a permit for the erection of a building which, as the Court held, would be built in contravention of the by-law was refused.

This decision was reversed, but only on the ground that the erection of the proposed building would not be a contravention of the by-law, as it would not front on Avenue Road, and that the by-law was *ultra vires* in so far as it applied to buildings abutting on that street: (1913), 28 O.L.R. 52, 11 D.L.R. 509.

BRITISH COLUMBIA.

Acts within the discretionary powers of a municipal council are not subject to judicial control except where fraud is shewn or there is a manifest invasion of private rights. An injunction to restrain a corporation from proceeding with a contract awarded to another than the lowest tenderer was refused, and the action dismissed: Haggerty v. Victoria (1895), 4 B.C.R. 163.

Where a statute confers upon a municipal council power to determine upon the expediency of measures relating to its affairs, its judgment upon matters thus committed to it, while acting within the scope of its authority, cannot be controlled by the Courts, and the decision of the council is, in the absence of fraud, final and conclusive: In re Glover and Sam Kee (1914), 20 B.C.R. 219, 22 Can. Cr. Cas. 297, 27 W.L.R. 886, 5 W.W.R. 1276.

MANITOBA.

A by-law which is in strict accordance with the powers conferred by the legislature by the Act under the authority of which it is passed cannot be held to be unreasonable, uncertain or oppressive so as to render it invalid or unenforceable: Rex v. Schuster, Stark v. Schuster (1904), 14 Man. L.R. 672, 8 Can. Cr. Cas. 354.

A by-law which amended a by-law prohibiting the erection of buildings on a residential street within fifteen feet of the street line, by permitting a landowner to erect a building on the corner of that street and an intersecting business street within six feet of the street line on condition that he would convey the six feet and a small triangle at the corner to the corporation, was held to be within the powers of the council and neither unreasonable nor discriminatory: In re Wood and Winnipeg (1911), 21 Man. L.R. 426, 17 W.L.R. 220, 19 W.L.R. 366.

A by-law passed by the council of a city corporation, in the exercise of its legislative authority, which prohibits the erection of an apartment block within a defined area, should not be held to be unreasonable or discriminating and therefore invalid because there are already several apartment blocks in the same neighbourhood, and the applicant who seeks to quash the by-law had bought a lot within the area with the intention of erecting an apartment block on it or of selling the site to someone who would do so.

The discretion of the council *bonâ fide* exercised in giving such a by-law three successive readings at one sitting, under a rule of procedure providing that that might be done on urgent and extraordinary occasions, should not be interfered with, and the by-law should not be quashed for irregularity on that account.

In re Maycock and Winnipeg (1914), 24 Man. L.R. 646, 29 W.L.R. 182, 6 W.W.R. 1430, distinguishing Stiles v. Galinski, L.R. (1904), 1 K.B. 615, 20 T.L.R. 219.

QUEBEC.

A by-law which provided that no proprietor, tenant, head or manager should allow any employee under his control to frequent any manufacture, industrial establishment, factory, works, etc., unless such employee had a certificate shewing that he had been vaccinated, or that vaccination was not necessary, was held to be unreasonable and oppressive, because it did not apply merely to places of business under the control of the persons to whom the prohibition extended, but to any place of business: Montreal v. Garon (1903), Q.R. 23 S.C. 363.

A municipal corporation having power to construct public works may, in its discretion, construct them all at once, or in portions, or by territorial districts, and it may, therefore, enact a by-law to establish a system of sewers in the municipality excepting one of the wards: Juneau v. Levis (1905), Q.R. 14 K.B. 104.

Unless a by-law, enacted in good faith, is so unreasonable, unfair or oppressive as to be a plain abuse of the powers conferred upon the municipal council, it should not be set aside: Montreal v. Beauvais (1909), 42 S.C.R. 211.

BY-LAWS WHICH DISCRIMINATE.

Ordinances should be general, or, at all events, not discriminating in their operation: Dillon on Municipal Corporations, 5th ed., s. 593 (note, p. 931).

As it would be unreasonable and unjust to make, under the same circumstances, an act done by one person penal and if done by another not so, ordinances which have this effect cannot be sustained. Special and unwarranted discrimination or unjust or oppressive interference in particular cases is not to be allowed. The powers vested in municipal corporations should, as far as practicable, be exercised by ordinances general in their nature and impartial in their operation: Dillon on Municipal Corporations, 5th ed., s. 593.

ONTARIO

A by-law which permits the council to suspend its operation in individual cases is bad: In re Nash and McCracken (1873), 33 U.C.R. 181; Milk Farm Products v. Buist (1916), 35 O.L.R. 325, 336, 26 D.L.R. 459.

A by-law prescribing the width of tires which excepted wagons carrying lumber or goods from the mill or manufactory thereof into the municipality if distant more than two miles from its limits, or vehicles loaded with such articles passing through the municipality, was held to discriminate against residents of the municipality in favour of others: Reg. v. Pipe (1882), 1 O.R. 43.

Reg. v. Levy (1899), 30 O.R. 403, noted under s. 413, par. 1.

A municipal corporation owning waterworks has power to discriminate as to non-residents of the municipality and to supply water to them on special terms in a manner which might not obtain as to resident consumers: Mackenzie v. Toronto (1904), 4 O.W.R. 457.

The rate for water supplied to any class of customers must be an equal rate to all members of the class, and a by-law providing for a higher rate on certain manufacturers than that paid by others is, therefore, illegal: Hamilton Distillery Company v. Hamilton (1905), 10 O.L.R. 280, (1906) 12 O.L.R. 75, (1907) 38 S.C.R. 239, following Attorney-General v. Toronto (1893), 23 S.C.R. 514.

BRITISH COLUMBIA.

In Tai Sing v. Maguire (1878), 1 B.C.R. Pt. 1, 101, it was held that The Chinese Tax Act, 1878, was *ultra vires* of the legislature. Section 2 provided that "Every Chinese person over twelve years of age shall take out a license every three months, for which he shall pay $10 in advance unto and to the use of Her Majesty;" the view of the Court was that the by-law was not intended to collect revenue, but to drive the Chinese from the country, thus interfering with the authority reserved to the Dominion Parliament as to the regulation of trade and commerce, the rights of aliens and the treaties of the Empire.

It is not competent for a provincial legislature or a municipal council to deprive, generally, particular nationalities or individuals of the capacity to take out municipal trade licenses, and a Chinaman has the right to apply for a license: Reg. v. Victoria (1888), 1 B.C.R. Pt. II. 331.

Reg. v. Mee Wah (1886), 3 B.C.R. 403.

The Municipal Act, 1885, s. 10, authorized municipal councils to license and regulate wash-houses and laundries, and s. 11 "to levy and collect from every person who keeps or carries on a public wash-house or laundry such sum as shall be fixed on by by-law, not exceeding $75.00 for every six months."

On appeal from a conviction for carrying on a public laundry without a license, it was held that:—

(1) Taxation by means of license fees and the tax in question was indirect taxation.

(2) Indirect taxation except as provided by s. 92 (9) of The British North America Act is *ultra vires* of a provincial legislature.

(3) The words, "other licenses," in s. 92 include only industries *ejusdem generis* with those specified, and do not include wash-houses, and that s. 11 was *ultra vires*.

(4) If it appears that a tax is not *bonâ fide* within the purpose provided for, but is imposed with the purpose of discriminating against a class, it is not within the justification of the enabling statute, and that, on the facts, the tax was intended not to raise revenue, but as a restriction on the Chinese.

A by-law which provides a different license fee for vehicles drawn by horses from that for other vehicles used for hire is not invalid: Rex v. Forshaw (1910), 15 B.C.R. 322.

In re Vancouver Incorporation Act (1916), 10 W.W.R. 1362, in which it was held that a resolution instructing the license inspector to refuse to accept the bonds of any insurance or casualty company not holding a Dominion license was invalid. The council has not the right to create a monopoly or arbitrarily exclude from the position of bondsman any person, company or class.

This case was decided under a statute which gave the council authority to pass by-laws regulating motor vehicles and for requiring a bond or security from drivers and chauffeurs against damages.

New Brunswick.

In Jonas v. Gilbert (1881), 5 S.C.R. 356, it was held, reversing (1880) 20 N.B. 61, that a by-law imposing a license tax of $20 on resident traders and $40 on non-resident traders was invalid.

Quebec.

A by-law which required that certain stores should be closed during certain hours at night, but excepted from its operation, among others, stores where fruit, confectionery, tobacco and liquor were sold by retail, was held to be arbitrary and oppressive in so far as it made an unjust discrimination between different classes of merchants selling the same articles, and ordered, without lawful cause, the closing of stores at hours when trade could be carried on without violating the police regulations concerning order, health, morality and the public good, and restrained the freedom of trade, and the by-law was declared null and void: Rasconi v. Montreal (1896), Q.R. 10 S.C. 278.

A municipal corporation has the right to impose on traders carrying on business within the municipality the obligation of taking out licenses for their business, but cannot impose this obligation only on persons who carry on a particular kind of business to the exclusion of others: Saint Ambroise v. Godin (1898), 5 Rev. de Jur. 321.

St. Pierre de Broughton v. Marcoux (1908), Q.R. 17 K.B. 172, noted under s. 283 (1), in which it was held that an application to the civil Courts to quash a by-law is open only in case of illegality or *ultra vires*, and that the recourse of a person who objects to a by-law as being unjust or discriminating is by appeal to the county council.

Saskatchewan.

In re Pierce (1916), 31 D.L.R. 753, 33 W.L.R. 554, 9 W.W.R. 1184. A by-law requiring commercial travellers for non-resident firms to pay a three hundred dollar license fee is *ultra vires*, because it discriminates between those who have and those who have not a place of business in the municipality.

Territories.

Jonas v. Gilbert (supra) was followed in Rex v. Pope (1906), 7 Terr. L.R. 314, 4 W.L.R. 278, in which it was held that a by-law which fixes one fee for an auctioneer's license in the case of residents and a higher fee in other cases is invalid.

Delegation of powers of the council.

The exercise of a discretionary power vested in a council cannot, in the absence of statutory authority, be delegated.

A council may, however, delegate to an officer or functionary merely ministerial matters.

ONTARIO.

In re Mackenzie and Brantford (1884), 4 O.R. 382, in which it was held that a by-law which delegated to persons not members of the council—the Board of Health—powers which, as municipal matters, belonged exclusively to the council, was invalid.

Reg. v. Webster (1888), 16 O.R. 187, in which it was held that a by-law, which excepted from its prohibition the carrying on of manufactures or trades where the owners of neighbouring buildings consented to and the chairman of the Board of Works approved of their being carried on, was invalid, because, by requiring their consent, it made the owners of the neighbouring buildings judges, and divested the council of the power it should personally exercise, and by requiring the approval of the chairman of the Board of Works it permitted favouritism, and all persons who desired to follow the same trade were not placed on the same footing, and because the by-law delegated in part the exercise of the judgment and discretion that should be exercised by the enacting body alone.

This case followed in In re Kiely (1887), 13 O.R. 451, noted under s. 407, par. 4.

A municipal council cannot delegate to a Board of Health power to cancel a license which the council has granted under a statutory authority to pass by-laws "for licensing and regulating milk vendors": In re Foster and Hamilton (1899), 31 O.R. 292.

ALBERTA.

The legislature has power to delegate to a municipal council the power to make by-laws for the issuing of licenses and payment of license fees, and the council has power to place the executive work of issuing the licenses in the hands of commissioners: Elves v. McCallum and Edmonton (1916), 28 D.L.R. 631, 34 W.L.R. 669, 10 W.W.R. 696.

BRITISH COLUMBIA.

Where a municipal council has statutory authority to pass by-laws for licensing, regulating and governing, it is not competent for the council by by-law to provide that the amount of the license fee may be from time to time fixed and regulated by resolution of the council, and such a by-law is bad because it does so and also for uncertainty: Reg. v. Jim Sing (1895), 4 B.C.R. 338.

Power to license and regulate does not authorize the limiting of licenses to such persons as obtain a certificate of good character from the chief of police: Rex v. Sparks (1913), 18 B.C.R. 116, 10 D.L.R. 616, 21 Can. Cr. Cas. 184, 23 W.L.R. 613, 3 W.W.R. 1126.

MANITOBA.

In re Elliott (1896), 11 Man. L.R. 358, in which it was held that a by-law requiring the owners of all dairies whose milk was sold in the municipality to submit to an inspection and to take out a license, whether their dairies were in the municipality or not, was *ultra vires* and illegal so far as it applied to the owners of dairies who did not sell their milk in the municipality, but to other persons who might or might not sell it there.

It was also held in the same case that a provision of the by-law requiring applicants for licenses to satisfy the health officer of the municipality before a license could issue, and left it in his power to decide who should have a license and who should not, was *ultra vires* as an illegal delegation of authority which the council itself should exercise.

Nova Scotia.

The exercise of the power of a town council to determine the height at which electric wires shall be suspended above its streets cannot be delegated to an official: Attorney-General v. Chambers Electric Light and Power Company (1913), 14 D.L.R. 883, 13 E.L.R. 443.

Quebec.

Article 65 of the new Municipal Code of Quebec provides that "the council must directly exercise the powers conferred upon it by this Code: it cannot delegate them."

It is, however, provided by the same article that committees may be appointed to study any question, but that the report of a committee is not to have any effect until adopted by the council at a regular sitting.

Article 96 of the former Code provided that a council might delegate to committees "its powers respecting the management of any business or particular kind of business or for the execution of certain duties," but the same article provided that no report or order of any committee should have any effect until adopted by the council at a regular session, save in the case of an inquiry or investigation provided for by art. 98. There was no provision against delegation such as is contained in art. 65 of the new Code.

A municipal council has power to investigate and inquire into an account rendered to the corporation, and may lawfully delegate its power so to do to a committee named by it, and, in order to empower the committee to lawfully inquire into an account, it is not necessary that any charge or accusation, specific or other, should be made against the person presenting the account: Lussier v. Maisonneuve (1898), Q.R. 15 S.C. 45.

A municipal council cannot delegate its power to select subjects in respect of its statutory right to impose taxation, but must itself determine them: Quebec v. Grand Trunk Railway Company (1898), Q.R. 8 Q.B. 246, affirmed (1899) 30 S.C.R. 73.

A municipal council has no power to delegate to a committee the authority vested in it by statute to prescribe standing places or stations for cabs: Samson v. Montreal (1903), Q.R. 23 S.C. 500.

A county municipal corporation which has decided to build a county bridge and has adopted a *proces-verbal* enumerating the works to be done, without determining the cost, cannot delegate to a local corporation the adjudication of the enterprise and the execution of the works. In making this delegation it acts *ultra vires*.

One of the ratepayers called upon to pay the cost of the bridge has an interest sufficient to entitle him to attack in nullity by direct action the proceedings both of the county and of the local corporation.

The provision of the Municipal Code relating to the appeal to the county council or the Circuit Court do not apply in such a case, for there is a distinction in these contestations between acts illegally done by a corporation in the exercise of its powers and acts beyond its powers—*ultra vires* acts.

Forest v. L'Assomption (1915), Q.R. 48 S.C. 151.

SASKATCHEWAN.

In Hall v. Moose Jaw (1910), 3 S.L.R. 22, 12 W.L.R. 693, it was held that a by-law which required, as a condition precedent to the granting of a cab or hack license, that the granting of it should be previously recommended by the chief of police, and that he should certify as "to the good conduct and ability of the applicant to fill the position of a hack driver," was invalid.

NECESSITY FOR BY-LAW AND OTHER CASES.

ONTARIO.

In Gooderham v. Toronto (1890), 21 O.R. 120, 134-5, it was held by Ferguson, J., that a by-law is necessary to authorize the opening up of a highway, created by dedication by a registered plan, the situs of which remains in the possession of the person by whom the dedication was made or those claiming under him.

The Municipal Act then in force conferred power on the council of all municipalities to pass by-laws for "opening" roads, etc. (R.S.O. 1887, c. 184, s. 550 (1)).

"Opening" roads is not mentioned in the corresponding provision of the present Act, R.S.O. 1914, c. 192, s. 472 (1), cl. (*c*), the words "establishing and laying out" having been substituted for it.

A by-law which authorizes the raising of a loan for the purpose of mining and supplying the municipality with natural gas is not an authority for making a contract for the mining work to be done; a by-law providing for it is necessary: Wigle v. Kingsville (1897), 28 O.R. 378.

A by-law passed to raise money to pay for the opening of a street without any settled plan shewing the exact position of the intended street or of the land to be taken or of the cost of the expropriation, and without a by-law having been passed providing for the expropriation of the land, was quashed: In re Caldwell and Galt (1899), 30 O.R. 378.

Where an original road allowance not cleared and opened up for public travel and not used as a public road, which crosses a line of railway, is obstructed by fences on both sides of the line, and the corporation is desirous of opening the road and making it fit for travel, the corporation is entitled to an injunction restraining the company from obstructing the road and to a mandatory order for the removal of the fences, and a by-law for opening the road is not necessary, but it is sufficient if the council directs its officers to open it: Gloucester v. Canada Atlantic Railway Company (1902), 3 O.L.R. 84, 4 O.L.R. 262, 1 O.W.R. 485.

A by-law for borrowing money for the erection of a school-house was quashed because (1) the site had not been determined by the School Board and (2) no application had been made by it to the council for the borrowing of the money: In re McGloghlon and Dresden (1909), 1 O.W.N. 74.

It was held in In re Sandwich and Sandwich, Windsor and Amherstburg Railway Company (1910), 2 O.W.N. 93, that permission for an electric railway company to use the highways need not be conferred by by-law, and that it might even be acquired by acquiescence, referring to Pembroke v. Canada Central Railway Company (1882), 3 O.R. 503, and that there is no power to recall a permission once granted.

Where a municipal council has power without petition to pass a by-law to provide for the closing of shops between 7 p.m. and 5 a.m., and is required on petition to pass a by-law requiring shops to be closed "at the times and hours mentioned in that behalf in the application," and the council passes a by-law requiring the shops to be closed between 7 p.m. and 5 a.m., the by-law is valid, and will be presumed to have been passed under the authority which the council possesses to pass by-laws without petition, although insufficiently signed petitions have been presented for the passing of it: In re Simpson and Caledonia (1912), 3 O.W.N. 503, 1 D.L.R. 15, 20 O.W.R. 874.

A township council has no authority under The High Schools Act, R.S.O. c. 268, to pass a by-law for raising money for the purpose of acquiring a site and the erection of a school-house in a high school district consisting of the township and a village where there is a high school in the village: In re Dougherty and East Flamborough (1914), 6 O.W.N. 487.

The consent of a corporation to the exercise of rights by a company, which is authorized by the legislature to exercise them on obtaining that consent, should be given by some corporate or legislative act: Toronto Electric Light Company v. Toronto (1915), 33 O.L.R. 267, 21 D.L.R. 859, followed in Calgary v. Canadian Western Natural Gas Company (1915), 25 D.L.R. 807, 809, 32 W.L.R. 558, 9 W.W.R. 252.

Reid v. Sault Ste. Marie (1916), 10 O.W.N. 283, which was the case of land injuriously affected by raising the grade of a highway for the purpose of making a proper approach to a bridge; there was no by-law authorizing it, but it was held that an action did not lie, and that the landowner must seek compensation under the Act.

Alberta.

It was held in Speakman v. Calgary (1908), 1 A.L.R. 454, 9 W.L.R. 264, that in a statute providing that municipal corporations may pass by-laws in relation to enumerated matters the word "may" is permissive only, and does not prohibit the corporations from exercising their jurisdiction otherwise than by by-law, and, therefore, that, although a statute provided that "the council may pass by-laws for (*inter alia* (7)) appointing such officials under such names as the council may deem necessary for the carrying out of work of the corporation, defining their duties and providing for their remuneration," this did not render necessary either a by-law or a contract under seal for the engagement of such an official or employee as the city engineer.

Where, as by subs. 17 of s. 163 of The Towns Act of Alberta, power is conferred on a council to pass by-laws for closing highways, the power must be exercised by by-law, and a resolution is not sufficient: In re Bassano (1912), 7 D.L.R. 601, 3 W.W.R. 189.

A municipal corporation in Alberta may authorize the transfer of its real estate by resolution. A by-law is not essential: In re McEwan and Calgary (1913), 6 A.L.R. 136, 13 D.L.R. 791, 25 W.L.R. 401, 5 W.W.R. 87.

A resolution authorizing the corporation's solicitor to take all "proceedings" and the mayor and clerk to sign all documents necessary to transfer the corporation's estate in land will be given effect to though part of the "proceedings" is the bringing about of provincial legislation as a condition precedent to a legal transfer: Ib.

A petition for the passing of a by-law, under The Early Closing Act, Alta., for the closing of all retail mercantile shops does not warrant the passing of a by-law closing certain classes of retail mercantile shops, but the by-law must exactly conform with the petition: In re Medicine Hat By-law (1914), 8 A.L.R. 41, 20 D.L.R. 149, 7 W.W.R. 126.

It was held in Calgary v. Canadian Western Natural Gas, etc., Company (1915), 25 D.L.R. 807, 32 W.L.R. 558, 9 W.W.R. 252, that to provide in express terms in a contract granting a franchise that it should be operative in any new territory annexed to the municipality whatever and wherever such addition might happen to be made, and binding from the execution of it, is beyond the powers of a municipal corporation, and a franchise so granted does not extend to the added territory, and it was held also that the grant of the franchise should be given by some corporate or legislative Act.

This decision was reversed on appeal though the judges differed as to the reasons for holding that the franchise extended to the added territory (1917) 1 W.W.R. 756, 32 D.L.R. 797, 33 D.L.R. 385.

Section 196 (5) of The Rural Municipalities Act, empowering councils to pass by-laws for the opening and maintaining temporary roads, is permissive and not imperative, and the power may be exercised by resolution, and a resolution is not bad for uncertainty although the reference is to the opening of an existing "trail" without a more definite description: Blomfield v. Starland (1915), 9 A.L.R. 203, 25 D.L.R. 43, 32 W.L.R. 905, 9 W.W.R. 552.

British Columbia.

Where a corporation lowers the grade of a highway and, in so doing, causes a subsidence of adjoining land, the land must be regarded as having been taken and used for the purpose of the work on the highway, and should be acquired under the authority of a statute empowering municipal councils to pass by-laws for acquiring land for the purpose of opening or extending streets, etc.: New Westminster v. Brighouse (1892), 20 S.C.R. 520.

A person summarily convicted of an infraction of a municipal by-law is estopped from contending, on appeal, that the by-law is *ultra vires* unless the objection was taken before the magistrate: Reg. v. Bowman (1898), 6 B.C.R. 271, 2 Can. Cr. Cas. 89.

A by-law for borrowing money for the purchase of an electric light plant belonging to a company is not invalid merely because the mayor is president of the company at the time of the passing of the by-law and of the completion of the contract: In re Arthur and Nelson (1898), 6 B.C.R. 323.

A by-law framed under one provision of a statute cannot be supported under other and different provisions of the same Act, *e.g.*, a by-law framed under a subsection for regulating the keeping of wild animals in captivity cannot be supported under provisions dealing with public health and sanitation: In re French and North Saanich (1911), 16 B.C.R. 106, 18 W.L.R. 160.

An electric railway company had statutory powers to construct and operate a street railway or tramway in certain districts in British Columbia along such streets and roads as might be specified by the council of any municipality through which the railway or tramway might be constructed, and the council might fix the location and terms of user over such streets or roads. The company obtained an agreement from the corporation of a municipality within these districts consenting to the company constructing a tramway along specified roads and upon certain conditions operating it for forty years, and by the same agreement it was provided that, if the corporation or other persons should thereafter desire to construct a tramway along other roads, the company should have, upon certain conditions, a prior right to construct and operate it. The affixing of the corporate seal to the agreement was authorized by by-law.

It was held by the Judicial Committee of the Privy Council, reversing the decision of the British Columbia Court of Appeal (1911), 16 B.C.R. 374, 19 W.L.R. 638, that the agreement and by-law did not amount to a charter bestowing a "right, franchise or privilege" on the company within the meaning of s. 64 of The Municipal Clauses Act, 1896, which prohibits the granting of "any charter bestowing a right, franchise or privilege" without the assent of not less than three-fifths in number of the electors entitled to vote upon a by-law to contract a debt: British Columbia Electric Railway Company v. Stewart L.R. (1913), A.C. 816, 14 D.L.R. 8, 109 L.T. 771, 25 W.L.R. 227, 5 W.W.R. 25.

It was held that the agreement did not confer upon the company any authority or power to make any tramway or railway in any street; that the company already possessed all necessary power and authority for that purpose (p. 828); that the powers of the corporation were of a restrictive, not of a donative, character; they did not enable the corporation to give, grant or confer any right, power or privilege whatsoever upon the company, and that their only function was to circumscribe or impose conditions upon the exercise by the company of the rights, powers and privileges already conferred upon it by the legislature (p. 824).

Manitoba.

Where a municipal council has statutory authority to pass by-laws for regulating or prohibiting the passage of certain classes of vehicles over highways and bridges, it has no power to provide that they shall not pass over them except at the *sole risk* of their owners. Such a by-law is not a *bonâ fide* exercise of the power conferred by the statute, as it neither regulates nor prohibits the passage of such vehicles, and it is *ultra vires* McMillan v. Portage La Prairie (1896), 11 Man. L.R. 216.

Quebec.

The statutory provision that municipal by-laws shall come into operation and have the force of law fifteen days after promulgation does not render invalid a by-law by which it is provided that it shall come into force on the day of its promulgation, but the by-law will be effective at the expiration of the period prescribed by the statute: Brosseau v. St. Lambert (1897), Q.R. 11 S.C. 425.

A municipal by-law imposing in advance a tax for the cost of the future maintenance of a winter road is void: Dudswell v. Quebec Central Railway Company (1898), Q.R. 15 S.C. 113.

A municipal corporation cannot by resolution confer the exclusive power of maintaining an aqueduct within its limits. Such a privilege can be conferred only by by-law: Marchildon v. Societe Baril & Cie. (1898), Q.R. 15 S.C. 499.

Municipal corporations have, without a by-law, the right and duty under art. 535 of the Municipal Code (art. 522 of the new Code) to keep in condition the streets and other municipal works and also to proceed against every person who by his fault has caused the deterioration: Compagnie du Pulpe de Megantic v. Agnes (1898), Q.R. 7 Q.B. 339.

By-laws, unless otherwise expressed, come into force fifteen days after their promulgation, and a notice given by the secretary-treasurer that a by-law will go into force thirty days after the notice does not delay the coming into force of the by-law: Filiatrault v. Coteau Landing (1902), Q.R. 21 S.C. 302.

Where a special law provides that a by-law shall come into force only after it has been approved by a majority of the electors entitled to vote for the election of a member of the municipal council, it is necessary that there shall be an actual majority of such electors and not merely a majority of those who vote: Mercier v. Warwick (1903), 6 Que. P.R. 78.

A by-law is necessary to authorize the expropriation of land for widening a street: Marsan v. Guay (1905), Q.R. 28 S.C. 145.

The decision of the Superior Court was reversed, (1906) Q.R. 16 K.B. 6, on the ground that under the special provisions of the charter of the municipality what was done could be authorized by a resolution.

In the absence of special provisions as to the procedure to be followed, a municipal corporation desirous of purchasing land for administrative purposes may do so on resolution of its council, as in ordinary cases of administrative functions: Birchenough v. Montreal (1912), Q.R. 21 K.B. 467, 3 D.L.R. 299.

A resolution of the 5th May, 1915, adopted by a county council abrogating a by-law of the 16th of the preceding March voted by the same council prohibiting the sale of intoxicating liquors and the issue of licenses for that object within the county and a new by-law of prohibition adopted at the same sitting must both be declared null and illegal for the following reasons: (1) because the notice of the meeting of the council was not given to one of the members of the council, (2) because the notice of the meeting did not mention the hour at which the meeting would take place, (3) because the repeal of the first by-law could not be effected by a simple resolution, but only by by-law, (4) because by the provisions of art. 1325 of R.S.Q. 1909 "no such by-law is revocable during the current year counting from the day on which notice of it had been communicated to the receiver of the revenues:" Loiselle v. Temiscaming (1916), Q.R. 50 S.C. 387.

SASKATCHEWAN.

The city of Regina has, under R.S. Sask. c. 84, s. 184, power to construct a subway beneath a railway track, and a by-law to authorize its construction is not necessary. So held in Armour v. Regina (1915), 8 S.L.R. 368, 29 D.L.R. 676, 33 W.L.R. 312, 9 W.W.R. 928, dissenting from Forster v. Medicine Hat (1913), 5 A.L.R. 36, 9 D.L.R. 555, 23 W.L.R. 200, 3 W.W.R. 618.

TERRITORIES.

In Rex v. Doll (1907), 7 Terr. L.R. 472, 6 W.L.R. 512, a by-law passed under the authority of an Act which authorized the passing of by-laws for taxing, altering and regulating the hours of opening and closing retail stores, provided that, before any person should be convicted under it, it must be proved that he transacted business during the prohibited hours, and it was held that the by-law was invalid.

PRESUMPTION AS TO VALIDITY OF BY-LAWS.

Dickson v. Kearney (1888), 14 S.C.R. 743, Cameron's S.C. Cas. 53, reversing (1887) 20 N.S. 95; Palmatier v. McKibbon (1894), 21 A.R. 441;

and Emsley South v. Miller (1905), 6 O.W.R. 726, noted under s. 432 (presumption in favour of validity of by-laws).

By-Law not to be quashed because unreasonable.

(2) A by-law passed by a council in the exercise of any of the powers conferred by and in accordance with this Act, and in good faith, shall not be open to question, or be quashed, set aside, or declared invalid, either wholly or partly, on account of the unreasonableness or supposed unreasonableness of its provisions or any of them. 3-4 Geo. V, c. 43, s. 249.

See notes to s. 10 (Status and powers of Municipal Councils).

General power to make regulations.

250. Every council may pass such by-laws and make such regulations for the health, safety, morality, and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act, as may be deemed expedient and are not contrary to law, and for governing the proceedings of the council, the conduct of its members, and the calling of meetings. 3-4 Geo. V. c. 43, s. 250.

It will be observed that the generality of the language of this section is limited by the words, "in matters not specifically provided for by this Act," and, therefore, with regard to any subject as to which express power to pass by-laws is conferred by the Act, the limit of the authority to legislate by by-law is the authority conferred by the Act in the particular case.

The Municipal Acts of the following provinces contain a provision somewhat similar to the good government part of this section:—

Alberta, Stat. 1911-2, c. 2, s. 163 (90).
Manitoba, R.S. 1913, c. 133, s. 328.
New Brunswick, R.S. 1903, c. 165, s. 95 (7).
Nova Scotia, R.S. 1900, c. 70, s. 134 (71).
Quebec, The Municipal Code, arts. 390, 414.
Saskatchewan—Cities, Stats. 1915, c. 16, s. 203; Towns, Stats. 1916, c. 19, s. 193.

Laws and ordinances relating to the comfort, health, convenience, good order and general welfare of the inhabitants are comprehensively styled "Police Laws or Regulations": Dillon on Municipal Corporations, 5th ed., s. 301.

See notes to s. 249 (1), under heading "Constitutionality."

This provision does not authorize the enactment of a by-law which absolutely prohibits a "particular occupation not in itself unlawful and only a nuisance from its abuse": per Draper, C.J., in In re Davis and Clifton (1859), 8 U.C.C.P. 236.

A by-law not authorized under the special power conferred by the municipal law, requiring all coal in a municipality to be weighed on the corporation's scales before being sold, cannot be supported under the general power conferred by the municipal law to pass by-laws for the peace, order, good government and welfare of the municipality: Rex v. Frankfeldt (1910), 13 W.L.R. 108 (Alta.).

A by-law making it compulsory for bakers to deliver bread in wrappers, intended to keep it clean, is a health by-law within the meaning of an enactment empowering the council to pass by-laws "for providing for the health of the 'municipality' and against the spreading of contagious or infectious diseases": In re Shelly (1913), 10 D.L.R. 666, 24 W.L.R. 285 (Alta.).

In Tookey v. Edmonton (1914), 16 D.L.R. 795, 28 W.L.R. 98, 6 W.W.R. 690 (Alta.), it was held that, under a power to make by-laws and regulations for the "peace, order, good government and welfare" of the municipality, a by-law for the establishment of a "municipal gazette" or municipal publication dealing exclusively with the details of the city's government might be passed.

A building regulation not authorized expressly by The Municipal Act cannot be supported under this section: Loo Gee Wing v. Amor (1909), 10 W.L.R. 383 (B.C.), noted also under s. 400, par. 4.

The council of the city of Montreal is entitled, under the welfare or good government clause of its charter, to grant by resolution a sum of $400 to be paid to the representatives of the press who occupy a room in the city hall, for contingencies: Montreal v. Tremblay (1906), Q.R. 15 K.B. 425, reversing (1905) Q.R. 28 S.C. 411.

A by-law of a municipal council requiring shops to be closed at stated hours is not founded on or authorized by the common law power vested in municipal councils to make police or other regulations for good government and the maintenance of public order. Nor is such a by-law authorized by the good government clause of the charter of the city of Montreal (s. 140): Beauvais v. Montreal (1906), Q.R. 30 S.C. 427, affirmed (1908) Q.R. 17 K.B 420, but reversed by the Supreme Court of Canada (1909), 42 S.C.R. 211, by which it was held that the by-law was authorized by the Shop Regulation Act.

Enright v. Montreal (1909), Q.R. 37 S.C. 448. Indemnity to heirs of firemen killed in the performance of their duties, noted under s. 400, par. 15.

This section does not confer power to prohibit any particular calling not in itself illegal. Such a power must be expressly conferred: Hall v. Moose Jaw (1910), 3 S.L.R. 22, 12 W.L.R. 693.

A by-law requiring that every owner of a dog shall take out a license for him and obtain a tag, which shall be securely fixed to the collar of the dog; that no person shall allow a dog to run at large in a public place unless led on a chain; that any dog found running at large shall be liable to be captured, killed or otherwise disposed of, is not *ultra vires*, and may properly be passed under the good government section of The Municipal Act: Zeats v. Johnston (1910), 3 S.L.R. 364.

FAILURE TO CONFORM WITH THE RULES OF PROCEDURE OF THE COUNCIL AS TO PASSING OF BY-LAWS.

A person dealing in good faith with a corporation or its agents is not bound to see that the private internal regulations of the corporation are duly carried out: Halsbury's Laws of England, vol. 8, par. 808, and cases there cited.

That failure to conform does not invalidate the by-law was decided in In re Jones (1899), 30 O.R. 583; In re Kelly and Toronto Junction (1904), 8 O.L.R. 162; London Street Railway Company v. London (1903), 9 O.L.R. 439, 448; In re Dewar (1905), 10 O.L.R. 463; In re Caldwell (1905) 10 O.L.R. 618, 620; In re Brewer (1909), 19 O.L.R. 411, 418; and Bourgon v. Cumberland (1910), 22 O.L.R. 256, Wilson v. Ingersoll (1916), 38 O.L.R. 260.

In re Wilson (1894), 25 O.R. 439, in which the contrary was held, must be taken to be overruled.

See also In re Cameron and Victoria (1905), 2 W.L.R. 387, 395.

Section 251 of the charter of the city of Winnipeg contains a provision that "no question, once decided, shall be reversed without notice from at least one meeting to another and without a majority of the whole council voting in favour of such reversal."

A by-law was read a first and second time, but, under the provisions of the city by-laws for governing the proceedings of the council, could not be read a third time at the same meeting, save on urgent and extraordinary occasions or upon a vote of two-thirds of the members present. A motion to suspend the rules was put and lost. Later on, at the same meeting, a motion to suspend the rules was again put and was carried by a sufficient vote, and the by-law was then read a third time.

Macdonald, J., quashed the by-law, holding that it was never duly passed; that the motion for the suspension of the rules first put having been lost, the provision of s. 251 which has been quoted applied, and it was not competent for the council to give the third reading to the by-law at the meeting at which the council purported to read it a third time.

On appeal, this decision was affirmed on an equal division, Richards and Perdue, JJ.A., agreeing with it. The Chief Justice and Cameron, J.A., dissented, being of opinion that "the question," as used in s. 251, meant "a matter of substance, a by-law or resolution dealing with some matter within the authority of the council"; that a motion to suspend the rules was not a "question" within the meaning of the section, but "a matter of procedure, a matter of domestic economy," and that there was nothing to prevent it coming up a dozen times at one meeting: In re Reaman v. Winnipeg (1914), 24 Man. L.R. 567, 17 D.L.R. 582, 20 D.L.R. 226, 27 W.L.R. 807, 28 W.L.R. 849, 6 W.W.R. 576, 1329.

Thirty days' notice is not required to enable the municipal council of Montreal to suspend the rule forbidding more than one reading of a by-law at a sitting, such suspension on consent of three-fourths of the members being authorized by the rules and by-laws of the council: Society of Quebec Schools for Poor Children v. Montreal (1901), Q.R. 19 S.C. 148.

Council a continuing body.

251. Proceedings begun by one council may be continued and completed by a succeeding council. 3-4 Geo. V. c. 43, s. 251.

The provision of the former Acts which this section replaces was enacted in consequence of the decision in Canada Atlantic Railway Company v. Ottawa (1884), 8 O.R. 183, 201, (1885) 12 A.R. 234, (1886) 12 S.C.R. 365, in which it was held that, where it was provided that a by-law should be passed by the council which submitted it to the ratepayers, the by-law could not be passed by the council of the succeeding year.

A municipal council cannot bind succeeding councils by the appointment of a fiscal agent with the exclusive right to sell municipal bonds: Wood, Gundy & Co. v. South Vancouver (1915), 10 W.W.R. 928 (B.C.).

Certain acts not to be done by councils after 31st December.

252. The council of a local municipality shall not, after the 31st day of December in the year for which its members were elected, pass any by-law or resolution for, or which involves, directly or indirectly, the payment of money, or enter into any contract or obligation on the part of the corporation, or appoint to or dismiss from office any officer under the control of the council, or do any other corporate act, except in case of extreme urgency, or unless the act is one which the council is required by law to do. 3-4 Geo. V. c. 43, s. 252.

Power to license includes power to prohibit.

253.—(1) The power to license any trade, calling, business or occupation or the person carrying on or engaged in it shall include the power to prohibit the carrying on of or the engaging in it without a license.

See Tai Sing v. Maguire (1878), 1 B.C.R. Pt. I. 101; Jonas v. Gilbert (1881), 5 S.C.R. 356; Reg. v. Mee Wah (1886), 3 B.C.R. 403; Reg. v. Victoria (1888), 1 B.C.R. Pt. II. 331; In re Pierce (1916), 31 D.L.R. 753, 33 W.L.R. 554, 9 W.W.R. 1184 (Sask.); noted under s. 249 (1) (By-laws which discriminate).

Elves v. McCallum and Edmonton (1916), 28 D.L.R. 631, 34 W.L.R. 669, 10 W.W.R. 696 (Alta.); Rex v. Sparks (1913), 18 B.C.R. 116, 10 D.L.R. 616, 21 Can. Cr. Cas. 184, 23 W.L.R. 613, 3 W.W.R. 1126; Hall v. Moose Jaw (1910), 3 S.L.R. 22, 12 W.L.R. 693; noted under s. 249 (1) (Delegation of powers of council).

Who to fix amount of license fee.

(2) Except where the power of fixing the sum to be paid for the license is expressly conferred on a Board of Commissioners of Police, the council of the municipality, where by this or any other Act the council or the board is authorized to pass by-laws for licensing any trade, calling, business or occupation or the person carrying on or engaged in it may, subject to the limitations contained in the Act, fix the sum to be paid for the license and the time for which it shall be in force and may provide for enforcing payment of the license fee.

A by-law imposing a license fee of $200 on the sale of cigarettes in stores and shops was held to be *ultra vires* and in effect prohibitive and not merely regulative, the evidence shewing that the fee exceeded the annual profits which any shop within the municipality could make in a year on the sale of cigarettes: In re Talbot and Peterborough (1906), 12 O.L.R. 358.

The council of a town, having a population of about seven thousand, with the electors' approval, passed a by-law increasing the amount to be paid for tavern licenses from $450 to $2,500. It was held that the validity of the by-law was dependent on the good faith of the council in passing it, and, it being apparent that the object was not with regard to the continuance of the business, but either altogether to prohibit it or to so restrict it as to create a monopoly, the by-law was bad and must be quashed: In re Rowland and Collingwood (1908), 16 O.L.R. 272.

A license fee of $100 for keeping a billiard table is not so large as to be in its nature prohibitive: In re Foster and Raleigh (1910), 22 O.L.R. 26, 342.

It was held in Crookston v. Miller (1912), 7 D.L.R. 771 (Alta.) following In re Talbot and Peterborough (supra), that a by-law of the council of a municipality having a population of 1,100, fixing the license fees for pool rooms at $300 for the first table and $200 for each additional table, was unreasonable and was in effect an absolute prohibition.

A provincial statute which confers upon a municipal corporation power to issue licenses for the purposes following and to levy and collect by means of such licenses the amounts following "from every person who, either on his own behalf or as agent for another or others, sells, solicits or takes orders for the sale by retail of goods, wares or merchandise to be supplied or furnished by any person or firm doing business outside the province and not having a permanent and licensed place of business within the province, of a sum not exceeding fifty dollars ($50) for every six months," is not *ultra vircs* of a provincial legislature, but the imposition of the license tax is within the authority of provincial legislatures under s. 92 (16) of The British North America Act.

A by-law passed under the authority of this statute, which followed the language of it except that the words "permanent or licensed place of business" were substituted for "permanent and licensed place of business," was held to be valid, as the word "and" in the statute should be construed "or": Poole v. Victoria (1892), 2 B.C.R. 271.

Where a municipal council has statutory authority to pass by-laws for licensing, regulating and governing, it is not competent for the council by by-law to provide that the amount of the license fee may be from time to time fixed and regulated by resolution of the council, and such a by-law is bad because it does so and also for uncertainty: Reg. v. Jim Sing (1895), 4 B.C.R. 338.

One appearance in the town where a barrister has his office as counsel for a client is sufficient to constitute the offence of "practising without a license" in contravention of a municipal by-law, although, following Apothcaries Company v. Jones, L.R. (1893), 1 Q.B. 189, acting in several instances would constitute only one offence in respect of which but one penalty could be imposed: Victoria v. Belyea (1906), 12 B.C.R. 112, 5 W.L.R. 161, affirmed (1906-7) 13 B.C.R. 5, 5 W.L.R. 428.

A municipal council empowered to collect a license fee "from any retail dealer not exceeding twenty dollars ($20) for every six months," the license to be granted "so as to terminate on the 15th day of July or the 15th day of January," may not stipulate that the applicant for the license shall confine his trading to week days during the period of the license and may not withhold the license if he refuses to agree to such a condition: Vasilatos v. Victoria (1910), 15 B.C.R. 153, 14 W.L.R. 141.

A by-law which provides a different license fee for vehicles drawn by horses than that for other vehicles used for hire is not invalid: Rex v. Forshaw (1910), 15 B.C.R. 322.

Where a municipal council has statutory authority to regulate the sale of beer of all kinds within the municipality, a by-law providing for a license fee of one hundred dollars ($100) is not *ultra vires* as imposing such an excessive tax as to be in effect prohibitive and not merely regulative: Rex v. Dibblee, Ex parte Smith (1907), 38 N.B. 350, 4 E.L.R. 226.

It was held in Pigeon v. Recorders Court and Montreal (1890), 17 S.C.R. 495, that a by-law fixing the fee for a license to sell meat, fish or in a private stall or shop outside the public market, meat, fish, vegetables or provisions usually sold in markets, at $200, in addition to the 7½ per cent. business tax levied upon all traders under another by-law, was not invalid.

Within the limits prescribed by the Constitution, the authority of the Parliament and of the legislature is absolute, and their power to impose taxation is not restricted by the rules, the mode, and the procedure to which municipal corporations are subject. A provincial legislature has, therefore, the right to impose taxation upon all callings exercised in a municipality without naming and specifying them: Quebec v. Grand Trunk Railway Company (1898), Q.R. 8 Q.B. 246, affirmed (1899) 30 S.C.R. 73.

A statutory authority to empower persons to sell elsewhere articles usually bought and sold on public markets by granting a license upon payment of such sum as shall be fixed by by-law is equivalent to authority to levy a special tax and justifies the exaction of a license fee or tax from such persons: Montreal v. Hatton (1901), Q.R. 21 S.C. 68.

A by-law which fixed one fee for an auctioneer's license in the case of residents and a higher fee in other cases is invalid: Rex v. Pope (1906), 7 Terr. L.R. 314, 4 W.L.R. 278.

How far some of these cases would be followed in Ontario, in view of the provisions of s. 249 (2), is open to question.

See also notes to s. 254.

License fee may be a tax.

(3) The license fee may be in the nature of a tax for the privilege conferred by it. 3-4 Geo. V. c. 43, s. 253 (1-3).

This subsection was added on account of a question having been raised in In re Foster and Raleigh (1910), 22 O.L.R. 22, 342, as to whether a power to license and regulate includes a power to exact a license fee for revenue purposes.

The repeal of an enactment which enabled a municipal corporation to levy a tax by by-law abrogates *ipso facto* a by-law passed in the exercise of the power conferred, and money paid under such a by-law after the repeal of the enabling Act may be recovered by action: Royal Insurance Company v. Montreal (1906), Q.R. 29, S.C. 161.

It has, however, been recently held that statutory authority to regulate by licensing does not confer the right to impose a license fee for revenue purposes: Rex v. Dimock (1916), 44 N.B. 124, 30 D.L.R. 217.

Discretion as to granting or refusing a license.

(4) (Subject to the provisions of *The Theatres and Cinematographs Act*,) the granting or refusing of a license to any person to carry on a particular trade, calling, business or occupation, or of revoking a license under any of the powers conferred upon a council or a Board of Commissioners of Police by this Act, or any other Act, shall be in its discretion, and it shall not be bound

to give any reason for refusing or revoking a license and its action shall not be open to question or review by any Court. 3-4 Geo. V. c. 43, s. 253 (4); 6 Geo. V. c. 24, s. 27 (1).

The words in brackets were inserted by 6 Geo. V. c. 24, s. 27 (1).

Under this subsection no such question as was raised in Merritt v. Toronto (1894), 25 O.R. 256, (1895) 22 A.R. 205, can now be raised, and that case is no longer law.

Power to pass by-laws for revoking certain classes of licenses is conferred by ss. 413, par. 1; 417, par. 5; 419, par. 2; 420, pars. 1, 3.

See In re Foster and Hamilton (1899), 31 O.R. 292, noted under s. 249 (1) (Delegation of powers of the council).

Refund when license revoked.

(5) Where a license is revoked the licensee shall be entitled to a refund of a part of the license fee proportionate to the unexpired part of the term for which it was granted. 3-4 Geo. V. c. 43, s. 253 (5).

See annotations to In re Crabbe and Swan River (1913), 9 D.L.R. 405.

Granting monopolies prohibited.
Rev. Stat. cc. 127, 128.

254.—(1) Subject to section 255, and to section 7 of *The Ferries Act* and to section 8 of *The Ontario Telephone Act*, a council shall not confer on any person the exclusive right of exercising, within the municipality, any trade, calling or business, or impose a special tax on any person exercising it, or require a license to be taken for exercising it, unless authorized or required by this or any other Act so to do; but the council may require a fee, not exceeding $1, to be paid to the proper officer for a certificate of compliance with any regulations in regard to the trade, calling or business. 3-4 Geo. V. c. 43, s. 254.

In In re Robinson and St. Thomas (1893), 23 O.R. 489, it was held that a by-law granting to the Bell Telephone Company the exclusive right for five years to use the streets of the municipality for the purposes of its business created a monopoly and was invalid.

A by-law of a township council, passed in good faith, under s. 20 of The Liquor License Act (R.S.O. 1897, c. 245), was quashed because it limited the number of tavern licenses to one, and thus gave to one licensee an exclusive right of exercising within the municipality a trade or calling contrary to the provisions of this section: In re McCracken and Sherborne (1910-1), 23 O.L.R. 81.

The Court, in this case, followed In re Barclay and Darlington (1854), 12 U.C.R. 86, and In re Greystock and Otonabee (1855), 12 U.C.R. 458, but Riddell, J., dissented and elaborately reviewed the cases.

See also La Compagnie pour l'Eclairage au Gas de St. Hyacinthe v. La Compagnie des Pouvoirs Hydraliques de St. Hyacinthe (1895), 25 S.C.R. 168, noted under s. 289 (3).

A municipal corporation cannot by resolution give an exclusive privilege of maintaining an aqueduct within the limits of the municipality; such a privilege can be conferred only by by-law: Marchildon v. Societe Baril & Cie. (1898), Q.R. 15 S.C. 499.

A by-law according the exclusive privilege to a company to operate electric tramways for a term of years within a municipality comes within the scope of the authority of a town corporation which has been vested with the right to authorize the construction and operation of tramways upon such terms as it shall see fit: Bell v. Westmount (1899), Q.R. 15 S.C. 580.

See also Lariviere v. Richmond (1901), Q.R. 21 S.C. 37, noted under s. 396.

A by-law of a municipal council, passed under the authority of art. 615 of the Municipal Code, granting the exclusive right for 25 years to lay water pipes within the municipality and of entering into contracts for supplying water, together with the right to use the roads and highways of the municipality for laying the pipes, was held to be invalid because it created a monopoly for 25 years, and there was no provision enabling the council to exercise proper control of the rates charged to the customers of the grantee, nor was there anything which obliged the grantee to supply water to the ratepayers: Peclet v. Marchand (1907), 4 E.L.R. 65 (Que.).

See also In re Vancouver Incorporation Act (1916), 10 W.W.R. 1362, noted under s. 249 (1) (By-laws which discriminate).

Limiting number of pool and billiard tables and licenses.

(2) This section shall not prevent the council under the powers conferred by paragraph 1 of section 420 from limiting the number of licenses and the number of tables to such number as the council may deem fit even if the number be limited to one, and this subsection shall have effect as if it had been passed on the 13th day of April, 1909. 6 Geo. V. c. 39, s. 3.

Before the enactment of subsection 2, it was held that a by-law of the council of a town having a population of 4,000, limiting the number of billiard and pool rooms to one, was "not obnoxious" to this section (In re Stewart and St. Mary's (1915), 34 O.L.R. 183, 24 D.L.R. 26), and subsection 2 was added to make this clear.

255.—(1) The council of a city may grant to any person, upon such terms and conditions as may be deemed expedient, the exclusive right to place and maintain for any period not exceeding ten years, iron waste-paper boxes on the street corners or elsewhere in the city, under and subject to the direction of the city engineer and the approval of the council.

Exclusive right to maintain waste paper boxes on streets.

(2) The location of the boxes shall be subject to change from time to time at the expense of the grantee, by whom the boxes shall be kept clean and painted, and the collections therein removed, to the satisfaction of the city engineer, and as often as he may direct. 3-4 Geo. V. c. 43, s. 255.

Location of boxes.

256. The council of a city may establish and carry on the business of cold storage in connection with or upon the market property of the corporation. 3-4 Geo. V. c. 43, s. 256.

Cold storage business.

257.—(1) Subject to the limitations and restrictions contained in this Act, a council may borrow money for the purposes of the corporation, whether under this or any other Act, and may issue debentures therefor.

Borrowing powers.

Arthur v. Nelson (1898), 6 B.C.R. 323, noted under s. 249 (1) (Necessity for by-law and other cases).

A corporation may, with the assent of the electors, borrow money to repay money unlawfully borrowed when the expenditure, although not included in the estimates, was for purposes within the general powers of the corporation: FitzGerald v. Molson's Bank (1898), 29 O.R. 105.

Authority to borrow for the extension of an esplanade, "provided the owners of the property north of the contemplated extension give and convey to the city the necessary land required for such extension," does not authorize the borrowing unless the owners of the property have given and conveyed it to the city.

The word "provided" is an apt word to create a condition, being synonymous with "if," "when" and "as soon as."

Hart v. Halifax (1902), 35 N.S. 1.

See also Hadley v. St. Paul (1897), Q.R. 13 S.C. 88; Menard v. Bordeaux (1908), Q.R. 34 S.C. 335, (1909) Q.R. 37 S.C. 259, noted under s. 249 (1) (Construction of by-laws).

Debts for street railways.

(2) A debt contracted by the corporation of a city for the construction or maintenance of a street railway shall not be included as part of its debt for the purpose of determining whether the limit of its borrowing power as fixed by any special Act has been reached. 3-4 Geo. V. c. 43, s. 257.

Subsection 8 of section 18 of *The Power Commission Act*, as enacted by section 6 of *The Power Commission Act, 1917*, provides as follows:—

> (8) Notwithstanding anything in *The Municipal Act* or any general or special Act contained, debentures issued, or purporting to be issued, by a municipal corporation, which has entered into a contract with the Commission for a supply of electrical power or energy from the Commission for the purpose of carrying out such contract, or for constructing or equipping works for the development, transmission and distribution of electrical power or energy so supplied, shall not be included in ascertaining the limits of the borrowing powers of the corporation as prescribed by *The Municipal Act*, or such other general or special Act.

AUTHENTICATION OF BY-LAWS.

How by-laws to be authenticated.

258.—(1) Every by-law shall be under the seal of the corporation, and shall be signed by the head of the council, or by the presiding officer at the meeting at which the by-law was passed, and by the clerk.

A resolution of the council, entered in the minute book and containing a contract at full length and having the seal of the corporation attached to it, cannot be considered a by-law because not signed as provided by this section: Wigle v. Kingsville (1897), 28 O.R. 378.

The affixing of a schedule read at the meeting at which a by-law is passed and the signing and sealing of the by-law need not be done at the meeting; they are matters of routine only, and can be done by the proper officers at a later date: In re Robertson and Colborne (1912), 4 O.W.N. 274, 8 D.L.R. 149, 23 O.W.R. 325. See also Brock v. Toronto and Nipissing Railway Company (1870), 17 Grant 425, 434; McLellan v. Assinoboia (1888), 5 Man. L.R. 127, 265.

Section 336 of The Municipal Act, R.S.M. c. 100, is imperative, and an instrument not sealed with the seal of the corporation or not signed by its head or the person presiding at the meeting at which it is passed is no by-law: In re Vivian and Whitewater (1902), 14 Man. L.R. 153.

In In re Davis and Creemore (1916) 11 O.W.N. 217, Mulock, C.J., refused to quash a by-law because not signed and sealed as required by this subsection. His view was that it was not proper to quash the by-law and so defeat a possible motion for a mandamus to compel the head of the municipality or presiding officer at the meeting at which the by-law was passed to perform his duty.

A by-law signed by the mayor outside a council meeting is valid if it is shewn that no alteration has been made in it during the interval: Mongenais v. Rigaud (1897), Q.R. 11 S.C. 348.

A by-law is passed when the final action of the council enacting it is done and where provision is made as to the time when, or within which, a by-law is to be passed, it has reference to this, and the omission to sign the by-law and affix the seal to it within that time will not invalidate the by-law: In re Local Improvement District No. 189 (1911), 4 S.L.R. 522, 18 W.L.R. 648.

Proof of seal or signature not required.

(2) Every by-law purporting to be so sealed and signed, when produced by the clerk or any officer of the corporation charged with the custody of it, shall be received in evidence in all Courts without proof of the seal or signature.

Omission to affix seal.

(3) Where, by oversight, the seal of the corporation has not been affixed to a by-law, it may be affixed at any time afterwards, and, when so affixed, the by-law shall be as valid and effectual as if it had been originally sealed.

Where the seal is affixed under the authority of this subsection, the effect is to validate the by-law from the beginning; the sealing relates back, and the by-law is to be treated as a good and valid by-law from the beginning: Rex v. Faux (1914), 6 O.W.N. 663, 17 D.L.R. 718, 23 Can. Cr. Cas. 75.

In that case the seal was affixed after objection was taken before the magistrate on the hearing of a prosecution for an infraction of the by-law.

Certified copy of by-law.

(4) A copy of a by-law, purporting to be certified by the clerk, under the seal of the corporation, as a true copy, shall be received in evidence in all Courts, without proof of the seal or signature. 3-4 Geo. V. c. 43, s. 258.

CERTIFICATE OF CLERK AS TO APPLICATION FOR BY-LAW.

Certificate of clerk that application for by-law duly signed.

259.—(1) Where by this or any other Act it is provided that a by-law may be passed by a council upon the application of a prescribed number of electors or inhabitants of the municipality or locality, the by-law shall not be finally passed until the clerk, or, where there is an assessment commissioner, the assessment commissioner has certified that the application was sufficiently signed.

Rev. Stat. c. 193.

(2) For the purposes of this section, the clerk and the assessment commissioner shall have all the powers of the clerk under section 16 of *The Local Improvement Act.*

Certificate to be conclusive.

(3) Where the clerk or assessment commissioner has so certified, his certificate shall be conclusive that the application was sufficiently signed. 3-4 Geo. V. c. 43, s. 259.

It was held by Middleton J., in In re Greig and London (1915), 8 O.W.N. 177, 22 D.L.R. 595, that this section did not apply to a petition under s. 16 of The Liquor License Act, R.S.O. c. 215.

PART X.

VOTING ON BY-LAWS.

260. In this Part,—

Interpretation.

(*a*) "By-law" shall include a resolution and a question upon which the opinion of the electors is to be obtained.

(*b*) "Electors" shall mean the persons entitled to vote on the by-law.

(*c*) "Judge" shall mean Judge or Junior Judge of the County or District Court of the county or district in which the municipality, the council of which submits the by-law, is situate.

(*d*) "Proposed by-law" shall mean a by-law submitted for the assent of the electors. 3-4 Geo. V. c. 43, s. 260.

Rev. Stat. c. 215.

261. This Part shall be subject to the provisions of *The Liquor License Act*. 3-4 Geo. V. c. 43, s. 261.

Bribery sections, etc., to apply to voting on any by-law or question.

262. All the provisions of this Act prohibiting the doing of any act or making it an offence against this Act, and prescribing penalties therefor, applicable to the election of members of municipal councils shall apply *mutatis mutandis* to the voting upon a by-law, whether the submission of it to the electors is optional with or compulsory upon the council. 3-4 Geo. V. c. 43, s. 262.

If a by-law requires the assent of the electors, mode of obtaining same.

263.—(1) Where a by-law requires the assent, or is submitted to obtain the opinion, of the electors, except where otherwise provided, the council shall, by a separate by-law, appoint the day for taking the votes of the electors, the places where the votes are to be taken, and a deputy returning officer to take the votes at every such place.

Date of taking vote.

(2) The date appointed shall not be less than three, or more than five, weeks after the first publication of the notice hereinafter mentioned. 3-4 Geo. V. c. 43, s. 263 (1-2).

Sunday and holidays are not to be excluded in computing the weeks: In re Armour (1907), 14 O.L.R. 606, 611; In re Duncan (1907), 16 O.L.R. 132, 142-3, at pp. 142-3.

It is a fatal objection to a by-law that the voting has taken place sooner or later than the time fixed by the statute. The cases as to this are numerous, but it seems unnecessary to refer to any but the more recent ones.

In re Armstrong (1889), 17 O.R. 766; In re Henderson (1907), 9 O.W.R. 599; In re Duncan (supra), where many of the earlier cases are referred to; In re Vandyke (1909), 19 O.L.R. 402, 404.

Submission of by-laws on election day.

(3) A proposed by-law may and in cities having a population of not less than 40,000 shall, where it provides for the purchase or acquiring of any public utility or street railway or for entering into any agreement for that purpose, or for disposing of any public utility or granting any public franchise, be submitted only on the day fixed for taking the poll at the annual municipal election. 4 Geo. V. c. 33, s. 6.

Time and place for summing up votes by clerk, etc.

(4) The by-law for taking the vote shall also appoint a time when, and a place where, the clerk will sum up the number of votes given for and against the proposed by-law, or in the affirmative and the negative on the question and a time and a place for the appointment of persons to attend at the polling places, and at the final summing up of the votes by the clerk, on behalf of the persons interested in, and promoting or opposing the by-law or voting in the affirmative or the negative on the question.

Publication of by-law.

(5) A copy of the proposed by-law, or a statement of the question submitted, as the case may be, shall be published once a week for three successive weeks, together with a notice signed by the clerk stating that the copy is a true copy of a proposed by-law, or a correct statement of the question submitted, as the case may be, and in the case of a by-law that, if the assent of the electors is obtained to it, it will be taken into consideration by

the council after the expiration of one month from the date of the first publication, which date shall also be stated, and in the case of a money by-law stating that a tenant who desires to vote must deliver to the clerk not later than the tenth day before the day appointed for taking the vote the declaration provided for by subsection 3 of section 265.

A by-law creating a debt, valid on its face, will not be quashed because in the published copy the dates of payment were left blank: In re Caldwell and Galt (1898), 30 O.R. 378.

A notice published on the 6th, 13th, 20th, 23rd, 27th and 30th days of April is not published at least one month before the 10th day of May of the same year. There must be one publication in each week of the month before the vote is taken, and for the purpose of reckoning weeks it is necessary to begin with the day of the first publication, and not with the first day of an ordinary week: Hall v. South Norfolk (1892), 8 Man. L.R. 430.

Notice of the consideration of a by-law after taking the vote of the electors upon it is insufficient if it does not state the hour of the day upon which the final reading will be given: Hall v. South Norfolk (supra).

Notice given by the council, under s. 66 of The Liquor License Act, R.S.M. 1902, c. 101, must, among other things, state that the by-law or a true copy of it can be seen at the office of the clerk until the day of the taking of the vote, and the absence of such a statement in the notice is fatal to the by-law: In re Cross and Gladstone (1905), 15 Man. L.R. 528, 2 W.L.R. 40.

First publication of the notice of voting on a local option by-law on the 14th of October was held not to be "as soon as possible" after the second reading, which had taken place on the 5th day of the preceding June, and the by-law was quashed: In re Hatch and Oakland (1910), 19 Man. L.R. 692, 14 W.L.R. 309.

Publication of the notice on the 16th, 23rd, and 30th days of October and the 6th and 13th days of November satisfies the requirements of publication for at least one month, as provided by The Municipal Act, R.S.M. 1902, c. 116, s. 376 (now s. 355, cl. (*b*), R.S.M. 1913, c. 133): In re Shaw and Portage La Prairie (1910), 20 Man. L.R. 469, 14 W.L.R. 542, 15 W.L.R. 718.

In In re Smith and North Cypress (1913), 23 Man. L.R. 508, 12 D.L.R. 269, 14 D.L.R. 397, 24 W.L.R. 141, the requirement of the statute was that the by-law should be published within two weeks after the first and second reading and before its third reading and passing, the first and second readings took place on 12th October and the first publication of the notice was on the 1st November, and it was held that the notice did not comply with the statute and the by-law was quashed.

In the case of a municipal by-law imposing prohibition, publication of the requisition and of the notice asking for the by-law must cover four full weeks.

Publishing it once a week upon any day of the week during four consecutive weeks is insufficient: Moir v. Huntingdon (1910), 11 Que. P.R. 319.

In re Mead and Moose Jaw (1911), 17 W.L.R. 14 (Sask.), in which it was held that publication on the 6th, 13th and 20th days of October was not a publication for at least three weeks.

In In re Salter and Local Improvement District No. 186 (1911), 17 W.L.R. 602 (Sask.), it was held that publication on the 18th and 25th days of November and the 2nd day of December was a publication for three weeks before the 12th December, which was the day fixed for the voting, was a sufficient publication for three weeks.

Publication on 10th, 17th and 24th November and 1st December, where the voting is to take place on 12th December, is publication for three weeks before the vote is to be taken: In re Little and Local Improvement District No. 189 (1911), 4 S.L.R. 522, 18 W.L.R. 648.

Notice.

(6) The notice shall also state the day and places appointed for taking the votes, except where the votes are to be taken at the same time as the annual election, and, in that case, shall state that the votes will be taken at the annual election, and shall also state the time and place for the appointment of persons to attend at the polling places and at the final summing up of the votes by the clerk.

Synopsis of by-law may be published.

(7) Instead of publishing a copy of the proposed by-law, the council may publish a synopsis of it, containing a concise statement of its purpose, the amount of the debt or liability to be created or the money to be raised by it, how the same is to be payable, and the amount to be raised annually for the payment of the debt, and the interest, or the instalments, if the debt is to be paid by instalments. *See* R.S. Man., c. 116, s. 376 (*b*).

One ballot for several by-laws.

(8) Where more money by-laws than one are submitted at the same time, they may be all placed upon one ballot paper. 3-4 Geo. V. c. 43, s. 263 (4-8).

Appointment of persons to attend at polling places and at final summing up of votes.

264.—(1) The head of the council, or a member of it appointed for that purpose by resolution, shall attend at the time and place appointed, and, if requested so to do, shall appoint, by writing signed by him, two persons to attend at the final summing up of the votes by the clerk, and one person to attend at each polling place on behalf of the persons interested in, and desirous of promoting, the proposed by-law, or voting in the affirmative on the question, and a like number on behalf of the persons interested in, and desirous of opposing, the proposed by-law, or voting in the negative on the question.

Declaration.

(2) Before any person is so appointed, he shall make and subscribe a declaration, Form 19.

Appointment to be produced.

(3) A person so appointed, before being admitted to the polling place, or to the summing up of the votes, shall, if so requested, produce and shew his appointment to the deputy returning officer.

When elector may act.

(4) In the absence of a person so appointed, or if no person has been appointed, any elector, upon making and subscribing, before the returning officer or deputy returning officer, a declaration, Form 20, may be present at a polling place, or at the final summing up of the votes, as the case may be. 3-4 Geo. V. c. 43, s. 264.

Persons qualified to vote on money by-laws.

265.—(1) The persons qualified to vote on a money by-law shall be those entitled to vote at an election with the following exceptions:

(*a*) Tenants, other than those mentioned in subsection 3.
(*b*) Farmers' sons.
(*c*) Income voters.

(2) The nominee of a corporation assessed upon the last revised assessment roll of the municipality which, if it had been a male person, would have been entitled to have been entered on the voters' list from which the list of voters mentioned in section 266 is to be prepared or in the case provided for by section 94 would, had it been a male person, have been entitled to be entered on such list of voters, shall also be qualified to vote.

Qualification of tenants.

(3) A tenant, whose lease extends for the time for which the debt or liability is to be created, or in which the money to be

raised by the proposed by-law is payable, or for at least twenty-one years, and who has by the lease covenanted to pay all municipal taxes in respect of the property other than local improvement rates, if he makes and files with the clerk not later than the tenth day before the day appointed for taking the vote, a declaration, under *The Canada Evidence Act*, so stating, shall be entitled to have his name entered on the list of voters prepared by the clerk, under section 266.

R.S.C. c. 45.

Appointment of nominee of corporation to be filed with clerk.

(4) Where a corporation entitled to appoint a nominee to vote on its behalf desires to vote on a money by-law it shall not later than the tenth day before the day appointed for taking the vote file with the clerk of the municipality an appointment in writing of a person to vote as its nominee and on its behalf, and the name of every such nominee shall be included in the list. 3-4 Geo. V, c. 43, s. 265.

Preparation of list of voters.

266.—(1) Where the proposed by-law is a money by-law or one on which all the municipal electors are not entitled to vote, the clerk, after the passing of the by-law for taking the vote, and not later than the tenth day before the day appointed for taking the vote, shall prepare a list of the persons entitled to vote on the proposed by-law, and, subject to section 267 and to section 24 of *The Ontario Voters' Lists Act*, the list so prepared shall be final and conclusive as to the right of every person named therein to vote, except in the case of a local option by-law where he is not at the time of the taking of the vote thereon, and has not been for the three months before that time a *bonâ fide* resident of the municipality, and that no person not named therein is entitled to vote.

Rev. Stat. c. 6.

From last revised voters' list or assessment roll.

(2) The clerk shall prepare such list from the last revised voters' list, and in the case provided for by section 94 from the last revised assessment roll, omitting from his list the names of all persons whose names are entered on such voters' list or assessment roll, but are not entitled as appears by such list or roll to

vote on the by-law, and in the case of money by-laws including in the list the nominees of corporations who are entitled to vote on the by-law.

Designating tenants entitled to vote.

(3) When the voting is to take place at the same time as the annual municipal elections, it shall be sufficient in the case of persons whose names are entered on the voters' list as tenants, if there is written on the voters' list used for the purpose of the election opposite to the name of such of them as are entitled to vote on the by-law the words "entitled to vote on the by-law," and it shall be deemed that the names of all others of such persons are omitted from the list within the meaning of subsection 2.

Clerk to certify.

(4) The list prepared by the clerk shall be certified by him to be a true and correct list of all persons entitled to vote on the proposed by-law, and shall be forthwith posted up in his office. 3-4 Geo. V. c. 43, s. 266.

Revision of list by Judge.

267.—(1) At any time not later than five days before the day appointed for taking the vote, a Judge, upon the application of any person whose name is entered on the list of voters prepared by the clerk, or of any person entitled to be entered on that list, may strike from the list the name of any person who is dead or whose name has been wrongly entered on it, and may add to the list the name of any person whose name has been wrongly omitted from the list, or who, if a tenant, though he had not made the declaration prescribed by subsection 3 of section 265, establishes that he has the qualification prescribed by that section.

Proof of death.

(2) For the purpose of proving a death, the certificate of the Registrar-General, or of the Division Registrar, shall be sufficient evidence, but if the identity of the person who is dead with the person whose name is sought to be struck off is disputed, or open to reasonable doubt, proof of the identity shall be required.

Rev. Stat. c. 6.

(3) The proceedings shall be the same, as nearly as may be, as prescribed by subsection 2 of section 23 of *The Ontario Voters' Lists Act*. 3-4 Geo. V. c. 43, s. 267.

Voters' list where all municipal electors vote.

268. Where all the municipal electors are entitled to vote on the proposed by-law the same lists shall be used in taking the vote as would be the proper voters' list to be used at a municipal election, and such lists shall be as final and conclusive as to the right to vote as when used at a municipal election. 3-4 Geo. V. c. 43, s. 268.

Where ratepayers qualified in more than one ward.

269. In a municipality divided into wards, a voter shall be entitled to vote on a money by-law in each ward in which he has the prescribed qualification, but shall not be entitled to vote more than once on any other by-law or on any question submitted to the electors unless it is otherwise expressly provided by the Act, by-law, or other authority under which the vote is taken. 3-4 Geo. V. c. 43, s. 269.

Clerk not to have casting vote.

270. The clerk, if otherwise qualified, shall be entitled to vote, but not to give a casting vote. 3-4 Geo. V. c. 43, s. 270.

"If otherwise qualified," *i.e.*, if he would be qualified if he were not the clerk.

There had been much difference of opinion as to the right of the clerk to vote. See In re Schumacher and Chesley (1910), 21 O.L.R. 522, which settled the law in accordance with this section, and was followed in In re Sturmer 1911), 24 O.L.R. 65, and in In re Fitzmartin, Ib. 102.

Form of ballot papers.

271. The ballot papers shall be according to Form 20 when the voting is on a by-law, and according to Form 21 when it is on a question. 3-4 Geo. V. c. 43, s. 271.

See cases noted under s. 150.

Directions to voters.

272.—The printed directions to voters shall be according to Form 22. 3-4 Geo. V. c. 43, s. 272.

273.—(1) Where all the municipal electors are entitled to vote the voter's oath shall be the same *mutatis mutandis* as at a municipal election where the members of the council are elected by general vote.

Voter's oath where all municipal electors vote.

(2) In the case of a money by-law a voter shall not be entitled to select the form of oath he will take, but the oath to be taken by him shall be that applicable to his qualification as a freeholder or tenant, as it appears in the list of voters. 3-4 Geo. V. c. 43, s. 273.

Voter not entitled to select form of oath.

274. Except as otherwise in this Part provided, Part III. shall apply *mutatis mutandis* to voting on a by-law. 3-4 Geo. V. c. 4, s. 274.

Application of Part III.

275. After the clerk has summed up the number of votes cast he shall declare the result of the voting and shall forthwith certify to the council the number of votes cast for and against the by-law. 3-4 Geo. V. c. 43, s. 275.

Clerk to certify result to council.

276. Subject to section 278, a by-law shall be deemed to have been assented to by the electors if a majority of the votes cast is in favour of the by-law. 3-4 Geo. V. c. 43, s. 276.

Assent of electors, what deemed to be.

A by-law for granting aid to a railway company was quashed because a sufficient number of unqualified persons to overcome the majority in favour of the by-law had voted: In re Dale and Blanchard (1910), 21 O.L.R. 497, (1911) 23 O.L.R. 69, 18 O.W.R. 360.

Where a by-law is submitted to the electors for their assent, the votes of persons not qualified to vote who voted must be rejected: MacLean v. Fernie (1906), 12 B.C.R. 61, 3 W.L.R. 512.

Under art. 4529 of the Revised Statutes of Quebec, money by-laws for loans by town corporations require the approval of the majority both in number and in value of the municipal electors who are proprietors of real estate within the municipality as ascertained from the municipal rolls: Chicoutimi v. Price (1898), 29 S.C.R. 135 (Que.).

Where by a special law it is provided that a by-law shall come into force only after it has been approved by a majority of the electors entitled to vote for the election of a member of the municipal council, it is necessary that there should be an actual majority of such electors and not merely a majority of those who vote: Mercier v. Warwick (1903), 6 Que. P.R. 78.

Where a municipal by-law has to be approved by the vote of a majority of a class of ratepayers, *e.g.*, the owners of property in a locality or in certain streets, and the notice is for a general vote of all ratepayers of the municipality, it is a nullity. The by-law, though it has received the sanction of the Lieutenant-Governor-in-Council, must be declared a nullity for want of the observance of an essential formality: Aubertin v. Boulevard Ste. Paul (1908), Q.R. 33 S.C. 289.

Where a by-law was carried by a majority of ten of the votes actually cast and it appeared that twelve of the persons who voted had no right to do so, the by-law was quashed: In re O'Flynn and Davidson (1911), 17 W.L.R. 153 (Sask.), following In re Cleary and Nepean (1907), 14 O.L.R. 392.

Procedure in case of a county by-law.

277. Where the by-law is proposed to be passed by a county council the proceedings shall be similar to those in the case of a by-law proposed to be passed by the council of a local municipality except that the list of voters for each local municipality shall be prepared by the clerk of it and not by the clerk of the county council, and that the declaration and appointment provided for by subsections 3 and 4 of section 265 shall be filed with the clerk of the local municipality. 3-4 Geo. V. c. 43, s. 277.

REQUISITES OF BONUS BY-LAWS.

Vote required to validate bonuses to railway, waterworks co., etc.

278.—(1) In the case of a by-law for granting a bonus in aid of a railway, or to a waterworks or water company, or for taking stock in, or for lending money to, or for guaranteeing the payment of money borrowed by a railway company, the assent of one-third of all the persons entitled to vote, as well as of a majority of all those voting shall be necessary.

To manufacturing industries.

(2) Subject to subsection 3, in the case of a by-law for granting a bonus in aid of a manufacturing industry, the affirmative vote of three-fourths of all the members of the council and the assent of two-thirds of the electors who vote on the by-law shall be necessary. 3-4 Geo. V. c. 43, s. 278 (1-2).

To iron works, grain elevators, etc.

(3) In the case of a by-law for granting a bonus for the promotion of iron works, rolling mills, works for refining or smelting

ore or for the establishment of grain elevators, or in aid of a beet sugar factory, an arena, a sanitarium, or a hospital, the assent of one-third of all the persons entitled to vote, as well as of a majority of those voting shall be necessary. 3-4 Geo. V. c. 43, s. 278 (3); 5 Geo. V. c. 34, s. 17.

Statement by clerk.

(4) In the cases provided for by subsections 1 and 3 the clerk shall add to the prescribed certificate of the result of the voting a statement of the total number of persons entitled to vote upon the by-law. 3-4 Geo. V. c. 43, s. 278 (4).

Where an elector deposits a ballot at the voting on a by-law submitted to the electors, if the ballot is afterwards rejected he has not voted within the meaning of s. 63 of The Liquor License Act, R.S.M. 1902, c. 101, and he should not be counted among those who voted in ascertaining whether the necessary three-fifths of those who voted have voted in favour of the by-law: In re Swan River Local Option By-law (1906), 16 Man. L.R. 312, 3 W.L.R. 546.

SCRUTINY.

Scrutiny may be had on application to County or District Judge.

279.—(1) Within two weeks after the clerk has declared the result of the voting, any person who was entitled to vote upon the by-law or the council, after giving notice of the application to such persons as the Judge directs, may apply to a Judge of the County or District Court of the county or district in which the municipality is situate for a scrutiny of the votes, and if it is shewn by affidavit that there are reasonable grounds for the application, and, if the application is by a person entitled to vote on the by-law, he enters into a recognizance before the Judge and to be allowed by him, in the sum of $100, with two sureties in the sum of $50 each, conditioned to prosecute the application with effect, and to pay to any person to whom costs may be awarded, the costs awarded to him, the Judge may order a scrutiny of the votes to be had, and shall appoint a time and place, within the municipality, for proceeding with it.

Notice of time of scrutiny.

(2) At least one week's notice of the time and place appointed shall be given by the applicant to such persons as the Judge directs, and to the clerk.

Proceedings.

(3) At the time and place appointed, the clerk shall attend before the Judge with the ballot papers, and the Judge, after hearing such evidence as he may deem necessary, and the parties, or such of them as attend, or their counsel, shall, in a summary manner, determine whether the by-law has been assented to as required by this Act, and shall forthwith certify the result to the council.

Striking off votes for corrupt practices.

(4) Where it is proved that any person interested in, and promoting or opposing the by-law, was guilty of bribery or of a corrupt practice in respect of a voter who voted on the by-law, or if any person who is disqualified under subsection 1 of section 61 from voting at an election or is disqualified under clause (*a*) of section 396, is proved to have voted there shall be struck off the number of votes given for the by-law, if the person guilty or so disqualified was promoting the by-law, or given against the by-law if the person guilty or so disqualified was opposing the by-law, one vote for every ballot cast by such voter.

Powers of Judge.

Costs.

(5) The Judge shall have the like power and authority as to all matters arising upon the scrutiny, as would be possessed by him upon a trial of the validity of the election of a member of a council, but shall not have power to set aside the voting on the ground of general bribery or corrupt practices; and the costs shall be in the discretion of the Judge, who may direct by whom, to whom, and in what manner they shall be paid.

No appeal.

(6) The decision of the Judge shall be final and not subject to appeal. 3-4 Geo. V. c. 43, s. 279.

It has been decided that the vote of a married woman, whose name appeared on the proper list, in which she was described as a widow, is not to be disallowed (In re Ellis (1911), 23 O.L.R. 427), but the correctness of the decision is perhaps open to question.

It has also been decided that no inquiry can be made, on a scrutiny, as to voters being under the age of twenty-one or being aliens, as the voters' lists are final and conclusive: The South Perth Election Case (1899), 2 Election Cas. 144; The Port Arthur and Rainy River Election Case (1907), 14 O.L.R. 345.

A person who demands a scrutiny of the votes polled at a municipal election, under The Cities and Towns Act of 1903, art. 5489, R.S.Q. 1909, though the scrutiny results in a change in his favour of the result of the election, must indemnify the returning officer and the secretary appointed by the Judge for the scrutiny for their travelling expenses and loss of time: Gaudet v. Simpson (1911), 12 Que. P.R. 333.

PASSING BY-LAWS BY COUNCIL.

Cases in which council must pass by-law assented to by electors.

280.—(1) Where a proposed by-law, which the council has been legally required by petition or otherwise to submit for the assent of the electors has received such assent, it shall be the duty of the council to pass the by-law, within six weeks after the voting took place.

Subsections 1 and 2 formed one section (373) in 3 Edw. VII. c. 19, and read as follows:—

"A by-law which is duly carried by the vote of the qualified electors shall within six weeks thereafter be passed by the council. Provided, however, that where a by-law which the council has been legally required by petition or otherwise to submit to a vote of the electors is duly carried, it shall be the duty of the council within six weeks thereafter to pass the said by-law."

In In re Dewar and East Williams (1905), 10 O.L.R. 463, 466-7, Anglin, J., expressed the opinion that under that section it was not incumbent on the council to pass the by-law, though it had been assented to by the electors, unless the council had been legally required by petition or otherwise to submit it to a vote of the electors.

It will be seen that any doubt upon this point is now removed, and that the section has been amended so as to express clearly what Anglin, J., was of opinion that the previous enactment meant.

A council is justified in refusing to pass a by-law for taking stock in a railway company and to pay for it by issuing debentures where the by-law does not recite that "the debt is created on the security of the special rate settled by the by-law and on that security only," as was required by s. 385 of 3 Edw. VII. c. 19: In re Blenheim (1910), 1 O.W.N. 363.

It should not be overlooked that s. 385 was repealed by 2 Geo. V. c. 58, s. 55 (1).

The provisions of The Manitoba Shop Regulation Act requiring that a by-law be passed within one month after the receipt of a petition signed by three-fourths of the occupiers of shops of the same kind, and that the by-law shall be published before the date on which it is to take effect, are directory and not imperative: In re Cloutier (1896), 11 Man. L.R. 220.

Discretion of council in other cases.

(2) In other cases it shall not be incumbent on the council to pass the by-law, but if the council determines to pass it, it shall be passed within six weeks after the voting took place and not afterwards.

Time within which by-law cannot be passed.

(3) The by-law in either case shall not be passed until the expiration of two weeks after the result of the voting has been declared, or if within that period an order for a scrutiny has been made, until the result of the scrutiny has been certified by the Judge.

Where a by-law which has received the requisite assent is passed before the expiration of two weeks after the clerk has declared the result of the voting, it will not, because so passed, be quashed: In re Duncan (1907), 16 O.L.R. 132.

That case was followed and applied although when the by-law was passed a scrutiny had been applied for: In re Copeman (1910), 1 O.W.N. 624, 805.

In re Duncan was followed in In re Joyce (1908), 16 O.L.R. 380, and in In re Coxworth (1908), 17 O.L.R. 431, and the latter case was followed in In re Shaw and Portage La Prairie (1910), 20 Man. L.R. 469, 14 W.L.R. 542, 15 W.L.R. 718.

A local option by-law may be given its third reading without waiting for the time for applying for a recount to elapse: In re Hatch and Oakland (1910), 19 Man. L.R. 692, 14 W.L.R. 309.

Time occupied by scrutiny not to be counted.

(4) The time which intervenes between the making of an application for a scrutiny and the final disposition of it shall not be reckoned as part of the six weeks. 3-4 Geo. V. c. 43, s. 280.

Extension of time for passing by-law.

(5) Provided that The Ontario Railway and Municipal Board may in the case of any by-law heretofore passed, or hereafter to be passed, upon the application of the Council extend the time for passing the by-law beyond such period of six weeks, and such extension of time may be made although the application for the same is not made until after the expiration of such period of six weeks, and in such case the by-law may be passed within such extended time. 4 Geo. V. c. 33, s. 7.

PROMULGATION OF BY-LAWS.

Promulgation of by-laws.

281.—(1) The promulgation of a by-law shall consist in the publication of a true copy of it, with a notice, Form 23, appended thereto, at least once a week for three successive weeks.

Publication.

If not moved against within the time limited, to be valid.

(2) If an application to quash the by-law, or part of it, is not made within three months after the first publication, the by-law, or so much of it as is not the subject of, or is not quashed upon any such application, shall be valid and binding, according to its terms, so far as the same ordains, prescribes or directs anything within the proper competence of the council. 3-4 Geo. V. c. 43, s. 281.

The provision of s. 377 of 3 Edw. VII. c. 19, which this subsection replaces, was that the by-law, "notwithstanding any defect of substance or form either in the by-law itself or in the time or manner of passing the same," should be a valid by-law so far, etc.

A somewhat similar provision was held, in Gesman v. Regina (1909), 2 S.L.R. 50, 10 W.L.R. 136, not to validate a by-law for closing a road passed without notice to a property owner affected; that a by-law so passed was passed without jurisdiction, and that the want of notice was not a want of substance or of form within the meaning of the enactment.

In Canada Atlantic Railway Company v. Cambridge (1887), 14 A.R. 299 (reversing (1886) 11 O.R. 392), (1888) 15 S.C.R. 219, it was held that a by-law, which required, but had not received, the assent of the electors, was not validated by s. 348 of 46 Vict. c. 18, which was substantially the same as s. 377 of 3 Edw. VII. c. 19, that the by-law was not one within the competence of the council to pass, or, as was said by Gwynne, J., it was "in fact, no by-law."

This case was followed in In re Lamb and Ottawa (1904), 4 O.W.R. 408, 410.

A by-law passed for improper purposes is not cured by promulgation: Knudsen v. St. Boniface (1905), 15 Man. L.R. 317, 1 W.L.R. 281.

PART XI.

QUASHING BY-LAWS.

Interpretation.

282. In this Part "by-law" shall include an order or resolution. 3-4 Geo. V. c. 43, s. 282.

Proceedings to quash by-law.

283.—(1) The Supreme Court, upon application of a resident of the municipality, or of a person interested in a by-law of its council, may quash the by-law, in whole or in part, for illegality.

There was at first great diversity of judicial opinion as to the meaning and scope of this enactment, but it now settled that:—

(1) The remedy is not restricted to by-laws which on their face are bad, but may be applied where the illegality of the by-law is shewn by extraneous evidence: In re Fenton and Simcoe (1885), 10 O.R. 27; In re Scott and Tilsonburg (1886), 13 A.R. 233; In re Ostrom and Sidney (1888), 15 A.R. 372; Connor v. Middagh (1889), 16 A.R. 356; In re Campbell and Lanark (1893), 20 A.R. 372; In re Alexander and Huntsville (1894), 24 O.R. 665.

(2) Unless the illegality appears on the face of the by-law, the Court has a discretion to refuse to quash, and where there has been long delay in moving, even in the case of a by-law which required but had not received the assent of the electors, the discretion will be exercised against quashing it.

In re Sheley and Windsor (1864), 23 U.C.R. 569, followed in In re Bann and Brockville (1890), 19 O.R. 409, and cited with approval in In re Richardson and The Board of Commissioners of Police of Toronto (1876), 38 U.C.R. 621, 630, by Harrison, C.J., who, though he held that the by-law in question in that case was not open to the objection urged against it, said that if he had come to a different conclusion he "would not have exercised the discretion which the Court has to refuse to quash by-laws after long and unexplained delay, and where the effect of quashing a by-law after such delay may be to cause great inconvenience and confusion in the affairs of the municipality, and especially where . . . the by-law is almost spent in its operation."

In support of his statement as to the practice, the Chief Justice referred to a long list of decided cases.

It was said by Wilson, J., in In re Revell and Oxford (1877), 42 U.C.R. 337, 347, that "where the power is conferred without any expressed limitation, except as regards the necessity for the preliminaries to the exercise of the power being regular, it is not possible to lay down a rule which will be found to work equally well in all cases or even in a majority of cases."

See also in In re Cameron and Victoria (1905), 2 W.L.R. 387.

(3) In re Ostrom and Sidney (1888), 15 A.R. 372, fully established the principle that "whenever a statute forbids the passing of a by-law interfering with provate property except on certain stated conditions as to notice, etc., the conditions must be strictly fulfilled. . . The same rule must . . . . apply where any proceeding is directed in express terms as a condition precedent to jurisdiction": per Hagarty, C.J., in In re Huson and South Norwich (1892), 19 A.R. 343, 350.

(4) "The Courts, from the earliest date, have striven to avoid undue strictness in the insistence of exact performance of statutable formalities where they could see that the objection did not reach either to the clear omission of some condition precedent required to be performed—where a mistake had been made in perfect good faith and with an honest purpose of obeying the law, although unintentionally deviating from its strict formal observance—where the objection was wholly technical and nothing had occurred to create a suspicion of unfair dealing, and there was no reason whatever to believe that the result of the whole proceedings had been affected": per Hagarty, C.J., in In re Huson and South Norwich (supra).

In In re Pang Sing and Chatham (1910), 1 O.W.N. 238, 1003, it was held that evidence as to the earnings of persons keeping laundries was inadmissible on a motion to quash a by-law imposing a license fee of $50 on such persons, especially as the real objection to the by-law was a provision of it which, it was said, rendered it necessary for laundrymen to live elsewhere than in their laundries. The evidence was offered for the purpose of shewing that the license fee was unreasonable.

In In re Henderson and West Nissouri (1911), 23 O.L.R. 651, a ratepayer was allowed to intervene in support of a by-law which it was sought to quash. There was reason to believe that the township council would not support it before the Court of Appeal, and it was held that the School Board, on account of its substantial interest in the money to be raised under the by-law, was a proper, if not a necessary, party to the application to quash.

In In re Major Hill Taxicab Company and Ottawa (1915), 33 O.L.R. 243, 21 D.L.R. 495, it was held that the Court has no power to quash a by-law of a Board of Police Commissioners, but see In re Richardson and The Board of Commissioners of Police of Toronto (supra,) not cited in which it appears to have been assumed that there was the power.

A by-law which is void in part is void altogether, except when the void part can be severed from that which is good, and the latter can be enforced independently: Halsbury's Laws of England, vol. 8, par. 762, and cases there cited.

A by-law or resolution may be valid in part and void as to the rest if the valid part has no connection with the part which is void. Otherwise the nullity of one part makes the whole void: Brunet v. Montreal (1913), Q.R. 22 K.B. 188.

Where proceedings to quash a municipal by-law are taken at the instance and on behalf of a number of interested ratepayers, who combine to make the necessary deposit and put forward as applicant one of their number, who launches the application, but afterwards gives notice of discontinuing it, the application not, however, being dismissed, and, after the expiry of the three months, one of the remaining ratepayers applies to be added or substituted as an applicant, he will be allowed to continue the proceedings in the original applicant's name on the terms of indemnifying him against costs: In re Ritz and New Hamburg (1902), 4 O.L.R. 639.

Generally speaking, a by-law which may be validated by registration ought not to be quashed unless irregularities in respect of it affected or might have affected the passing of it: In re Cartwright and Napanee (1905), 11 O.L.R. 69.

The by-law in question was subsequently validated by legislation, and the case is again reported in (1906) 8 O.W.N. 86, where the Court of Appeal dealt with the question of the costs of the proceedings, which, by the Act, was left to be dealt with by the Court.

There is no proceeding by which a proposed or inchoate by-law can be quashed or set aside or be declared invalid. Such proceedings can be taken only with respect to something that has, at all events, *primâ facie* the force of law: In re Liquor License Act (1913), 29 O.L.R. 475, 15 D.L.R. 473.

When an alleged by-law purports to be passed in accordance with the local option clauses of The Liquor License Act, R.S.M. c. 90, but is not sealed with the seal of the corporation, or not signed by its head, or by the person presiding at the meeting at which it was passed, the applicant is entitled to a definite order quashing it, so that the council of the municipality may know whether to receive license fees or not: In re Vivian and Whitewater (1904) 14 Man. L.R. 153.

An order to quash a by-law should not affect territory detached from the municipality whose council originally passed it and now forming parts of new municipalities the corporations of which were not served with notice of the application: Ib.

This case was not followed in In re Houghton and Argyle (1903), 14 Man. L.R. 526.

The authority conferred by s. 1 of title XXIV. of the Charter of Medicine Hat to apply to quash a by-law or resolution of the council for illegality entitles an elector to bring an action for that purpose and to obtain relief based upon and incidental to the illegality alleged: So held in Howson v. Medicine Hat, Yuill v. Medicine Hat (1915), 22 D.L.R. 72, 30 W.L.R. 319 (Alta.).

Only the applicant and the corporation have a status before the Court on an application to quash: Maclean v. Fernie (1906), 12 B.C.R. 61, 3 W.L.R. 512.

On a vote by ratepayers for accepting or rejecting a by-law authorizing the construction of an aqueduct and the issue of a loan, it is irregular for the president of the voting to withdraw names after they have been placed on the list of voters and the vote has been taken.

On proceedings to have the by-law declared null because of the irregularity, the Court has jurisdiction to examine the question of the voting and the validity of the votes cast before deciding whether the by-law has or has not been adopted by the electors according to law.
Lajeunesse v. St. Jerome (1898), 5 Rev. de Jur. 369 (Que.).

A municipal council has no authority to permit an individual to construct a reservoir in the gutter of a highway even if it causes no inconvenience, and a resolution authorizing it will be declared unlawful: Roy v. St. Anselme (1899), Q.R. 19 S.C. 119.

A resolution passed by a municipal council composed of six members, two of whom had been replaced by others at a recent annual election, is void: Laroche v. Ste. Emilie de Lotbiniere (1900), Q.R. 17 S.C. 352.

The fact that an appeal has been previously made to the county council which confirmed the by-law does not deprive the landowner of the right to bring an action nor does the remedy given by the Municipal Code by petition to quash exclude the right of action: Therriault v. St. Alexandre, (1901), Q.R. 20 S.C. 45.

Proces-verbaux and resolutions of a municipal council may be quashed on petition to the Superior Court or may be attacked by action: Farwell v. Sherbrooke (1903), Q.R. 24 S.C. 350.

A municipal council may not pay newspaper reporters for their contingent expenses; a resolution providing that that shall be done is *ultra vires* and null and void.

A ratepayer has the right to bring an action to have such a resolution annulled, but he cannot obtain a condemnation against persons who have received money under the authority of it to refund.
Tremblay v. Montreal (1905), Q.R. 28 S.C. 411.

A municipal elector who has taken proceedings to have a by-law quashed, when the proceedings abate in consequence of the conveyance by him of his immoveables, cannot afterwards proceed, and the subsequent acquisition of an immoveable of the value required by law does not restore to him the status he has lost. It is necessary that his name be placed again upon the list of electors, that of his vendor on it being of no avail: Boivin v. St. Johns (1908), Q.R. 34 S.C. 256.

A by-law requiring ratification by the vote of the electors is only a project until the vote is taken, and proceedings to have it quashed during the interval are premature: Boivin v. St. Johns (supra).

Judgment quashing a resolution of a municipal council appointing a mayor or a councillor in the cases provided for by the Municipal Code is *chose jugee* as to the persons appointed, and, therefore, where the resolution is attacked, they must be parties and be served with the petition: Lavoie v. St. Alexis (1908), Q.R. 36 S.C. 7.

The recourse of a person who objects to a municipal by-law as being unjust and discriminating is by appeal to the county council. An application to the civil courts to have it quashed is only open in case of illegality or *ultra vires:* St. Pierre de Broughton v. Marcoux (1908), Q.R. 17 K.B. 172.

See also Pease v. Moosomin (1901), 5 Terr. L.R. 207, noted under s. 349, in which it was held that a section such as this is merely permissive.

In Ex parte Doyle (1911), 41 N.B. 138, 11 E.L.R. 548, the Court refused to order a certiorari to bring up the proceedings of a county council which had directed a poll to be taken on the question whether liquor licenses should be issued, which was applied for upon the ground of irregularities in the petition which rendered it insufficient, the Court being of opinion that what the council had done was not a judicial act.

An injunction to restrain the passing of a by-law giving a bonus without obtaining the assent of the electors will not be granted. The proper course is to await the passing of the by-law, and then to move to quash it: Keay v. Regina (1912), 5 S.L.R. 372. 6 D.L.R. 327, 22 W.L.R. 185, 2 W.W.R. 1072.

Forest v. L'Assomption (1915), Q.R. 48 S.C. 151, noted under s. 249 (1) (Delegation of powers of council).

The provisions of the Municipal Code relating to the appeal to the county council or the Circuit Court do not apply to a proceeding attacking a *proces-verbal* of a county council which has decided to build a county bridge where the *proces-verbal* enumerates the works to be done without determining the cost, and delegates to a local corporation the adjudication of the enterprise and the execution of the works, because such a delegation is *ultra vires*.

See also notes to s. 249 (1).

It has been held recently that the question of "highway or no highway" cannot be determined on a motion to quash: In re Sanderson and Sophiasburgh (1916), 38 O.L.R. 249.

Service of notice.

(2) Notice of the application shall be served at least seven days before the return day of the motion.

These are clear days. See notes to s. 53 (1), cl. (*j*).

Recognizance.

(3) Before the application is made, the applicant, or, if the applicant is a corporation, some person on its behalf, shall enter into a recognizance before a Judge of the County or District

Court of the county or district in which the municipality is situate, himself in the sum of $50, and two sureties each in the sum of $50, conditioned to prosecute the application with effect, and to pay any costs which may be awarded against the applicant.

Misconduct of the applicant *dehors* the proceeding or not closely connected with it is not a ground for depriving him of the costs of a successful application: In re Davis and Beamsville (1910), 2 O.W.N. 423.

The Court has power to award costs: In re Sturmer and Beaverton (1911), 25 O.L.R. 190, (1912) Ib. 566, 2 D.L.R. 501.

Allowance of recognizance.

(4) The Judge may allow the recognizance upon the sureties making proper affidavits of justification, and after it is allowed, the recognizance with the affidavits shall be filed in the Central Office of the Supreme Court.

Deposit in court in lieu of recognizance.

(5) In lieu of the recognizance, the applicant may pay into Court $100, and the certificate of the payment into Court shall be filed in the Central Office.

Application of deposit.

(6) After the determination of the proceedings, the Judge may order that the money paid into Court be applied in payment of costs, or be paid out to the applicant. 3-4 Geo. V. c. 43, s. 283.

Quashing by-law for corrupt practice.

284. A by-law, in respect of the passing of which a violation of any of the provisions of sections 187 to 189 has taken place, may be quashed. 3-4 Geo. V. c. 43, s. 284.

This section is new. It replaces s. 381 of 3 Edw. VII. c. 19, which provided that:—

"Any by-law the passage of which has been procured through or by means of any violation of the provisions of sections 245 and 246 of this Act shall be liable to be quashed upon an application made in conformity with the provisions hereinbefore contained."

Where a cattle drover, not a "temperance man" or an agent in any way of the "temperance people," who were promoting the passage of a local option by-law, having a grudge against a local hotel keeper, took an active interest in the passing of the by-law, by treating freely as he passed through the township, with the view, as he admitted, of influencing the electors to vote for the by-law, but there was no general drunkenness, and it was not proved definitely that any one elector had been treated, and the by-law was carried by a majority of 205 in a vote of over 1,200, it was held that, in the circumstances, such treating and conduct were not the means of the passing of the by-law in violation of the two sections mentioned in section 381: In re Gerow and Pickering (1906), 12 O.L.R. 545.

See also notes to s. 187.

Application to quash by-law affecting another municipality.

285.—(1) Where it is alleged that a by-law injuriously affects another municipality or any ratepayer of it, and that the by-law is illegal, in whole or in part, the corporation of such other municipality or any ratepayer of it may apply to quash the by-law.

No security required from municipality.

(2) Where the application is made by a municipal corporation, security for costs shall not be required.

Inquiry by County or District Judge where corrupt practices alleged.

(3) Where the application is based upon an allegation of a violation of any of the provisions of sections 187 to 189, either alone or in conjunction with any other ground of objection, the Supreme Court may direct an inquiry as to the alleged violation to be had before a special examiner or a Judge of the County or District Court of the county or district in which the municipality is situate, and the witnesses upon the inquiry shall be examined upon oath.

Where probable grounds for quashing a municipal by-law are shewn, an inquiry should be directed: In re St. Boniface By-law (1912), 22 Man. L.R. 733, 1 D.L.R. 366, 20 W.L.R. 332.

Return of evidence to officer of Supreme Court.

(4) After the completion of the inquiry, the special examiner or the Judge shall return the evidence taken before him to the proper officer of the Supreme Court, and the same may be read in evidence upon the motion to quash.

No act to be done under by-law pending inquiry.

(5) Where an order, directing an inquiry, under subsection 3, has been made, and a copy of it has been left with the clerk of the municipality, nothing shall be done under the by-law unless the Supreme Court otherwise orders, until the application is disposed of.

(6) In other cases the Court may direct that nothing shall be done under the by-law until the application is disposed of. 3-4 Geo. V. c. 43, s. 285.

286. An application to quash, in whole or in part, a by-law which has not been promulgated or registered under the provisions of section 296, shall not be entertained unless the application is made within one year after the passing of the by-law, unless it required the assent of the electors, and had not been submitted for, or had not received their assent; but in that case an application may be made at any time. 3-4 Geo. V. c. 43, s. 286.

Time for making application to quash.

Exception.

Failure to file the affidavits in support of the motion to quash within the year owing to a slip in the solicitor's office is an irregularity only, and does not render the proceedings void: In re Arthur and Meaford (1915), 34 O.L.R. 231, 24 D.L.R. 878.

ONTARIO.

In the case of a by-law for opening a highway upon private property, the application to quash must be made within one year after the passing of it by the council, and it is not sufficient that it be made within one year after its registration, although the by-law does not become effectual until registered: Harding v. Cardiff (1882), 2 O.R. 329.

An application is "made" within the meaning of this section when the affidavits are filed and the notice of motion is served; and it is not necessary that the motion be brought on for hearing within the year: In re Shaw and St. Thomas (1899), 18 P.R. 454. See also Reg. v. McGauley (1887), 12 P.R. 259, and In re Sweetman and Gosfield (1889), 13 P.R. 293, 297.

In Kean v. Edwards (1888), 12 P.R. 625, the notice of motion, which was to set aside an award, was dated before, but not served until after, the expiration of the time limited for the application, and it was held not to be in time.

An application to quash a by-law of the council of a local municipality for closing a road, which, to be operative, requires to be assented to by the council of the county, ought not to be made until it has been assented to: In re Cameron and United Townships of Hagarty, Sherwood, Jones, Richards and Burns (1907), 10 O.W.R. 357.

BRITISH COLUMBIA.

Where a statute requires that "before any by-law . . . shall be valid or come into effect, the council shall cause it to be published once in every week for four weeks . . . after which the by-law may be reconsidered by the council, and, if reconsidered and finally adopted by the council within thirty days from the termination of the four weeks of publication aforesaid, it shall come into effect after seven days from its final adoption by the council, unless the date of its coming into effect is otherwise postponed by such by-law" (Municipal Act, 1892, s. 278); and by s. 279 of the same Act it is provided that, unless quashed, "the by-law shall, notwithstanding any want of substance or form either in the by-law itself or in the time or manner of passing the same, be a valid by-law," a by-law which was not reconsidered and finally adopted by the council within the thirty days mentioned in s. 278, where no motion to quash it had been made within the time limited for that purpose, is validated by s. 279 notwithstanding the failure to comply with the provisions of s. 278: Belrose v. Chilliwack (1893), 3 B.C.R. 115.

A motion to quash a by-law may be made within a month after the publication of it in the *Gazette*, although more than a month had elapsed since it was passed. So held in Kane v. Kaslo (1896), 4 B.C.R. 486, upon a consideration of ss. 122, 126 and 128 of The Municipal Act of 1892 (B.C.)

An application to quash a by-law made on the day next following the time limited, which expired upon a holiday, is in time: In re Nelson City By-law No. 11 (1898), 6 B.C.R. 163.

A landowner was held to be disentitled to attack by-law for dyking flat lands owing to his laches and acquiescence in the work being carried out in the manner in which it was done: Delta v. Wilson (1911), 17 W.L.R. 680, affirmed L.R. (1913) A.C. 181, 8 D.L.R. 881, 22 W.L.R. 931 (B.C.); also on the ground that the claim was barred by The Municipal Clauses Act, ss. 243, 244, or one of them, now R.S. 1911, c. 170, ss. 512, 513.

This was not the case of an application to quash the by-law, but of a counterclaim for damages for the alleged unlawful flooding of the defendant's land, and by the sections referred to such actions are barred, under s. 512, after the lapse of six months, and, under s. 513, after the lapse of one year, after the cause of action arose.

The case is noted under this section because there is no other section to which it is at all germane.

Manitoba.

By the provisions of the charter of the city of Winnipeg it is provided that any person dissatisfied with a by-law of the council, closing a street, and determining what persons or classes of persons, if any, are injuriously affected by the by-law, may appeal from the determination of the council "within ten days after the passage of the by-law," *i.e.*, the by-law so determining. A by-law was passed which was not to come into force until the happening of a subsequent event and a landowner appealed within ten days after the by-law came into force, which was more than ten days after it was passed, and it was held that the appeal was in time: Winnipeg v. Brock (1911), 20 Man. L.R. 669, 18 W.L.R. 28, 45 S.C.R. 271, 20 W.L.R. 243, 1 W.W.R. 435, reversing (1910) 16 W.L.R. 45.

Quebec.

An application to the Superior Court or a Judge thereof or to the Circuit Court to quash a by-law for illegality may be made within three months from the time it was brought into force, but after that delay an action or petition to have it quashed is prescribed: Prevost v. St. Jerome (1898), 5 Rev. de Jur. 395.

A petition to quash a *proces-verbal* is not prescribed by the lapse of more than 30 days between the date of its coming into force and the date of presentation to the Court of the petition if it has been served within 30 days: Comeau v. Ste. Edwidge de Clifton (1899), Q.R. 15 S.C. 405.

The annulment of a resolution of a municipal council may be demanded by action as well as by petition: Patry v. Levis (1899), Q.R. 16 S.C. 310.

The rules of prescription laid down in the Municipal Code do not apply to proceedings taken in the Superior Court attacking a resolution passed by a municipal council: Roy v. St. Gervais (1900), Q.R. 17 S.C. 377.

When a petition to quash a *proces-verbal* determining the location of a by-road has been served within 30 days following the promulgation of the *proces-verbal*, it is not necessary that the petition should be presented within that time: St. Aubin v. St. Jerome (1901), 5 Que. P.R. 317.

The right to attack a municipal by-law for illegality is prescribed by 30 days, counting from its coming into force: Art. 708, Municipal Code; now, by art. 433 of the new Code, three months "from the date of the act or proceeding attacked for illegality": Filiatrault v. Coteau Landing (1902), Q.R. 21 S.C. 302.

The prescription of three months for applying to annul municipal by-laws provided for by art. 304 of the charter of the city of Montreal applies only to the case of relative nullity, and not to an absolute nullity where it can be said that no by-law is in existence: Bell Telephone Company v. Montreal (1906), Q.R. 30 S.C. 157.

Under the Municipal Code any ratepayer may move to quash a by-law or resolution of the municipal council. The ordinary right of action is not taken away, but it is given only to one who has an interest or contingent interest peculiar to himself. The interest in common of ratepayers in the proper administration of municipal affairs is not sufficient: Emard v. Boulevard St. Paul (1907), Q.R. 33 S.C. 155.

An *ultra vires* municipal by-law may be quashed either on petition under the Municipal Code or in a direct action: Lennon v. Westmount (1909), 10 Que. P.R. 410.

The right to contest a municipal by-law in a town is not limited to proceeding by petition as provided by art. 368 and following of the statute of 1903 concerning cities and towns, but may also be exercised by a direct action: Allard v. St. Pierre (1909), 10 Que. P.R. 433.

PART XII.

MONEY BY-LAWS.

"Debt."

287.—(1) In this Part "Debt" shall include liability and the borrowing of money.

"Rateable" property."

(2) "Rateable property" when used in this Act or in any by-law heretofore or hereafter passed which directs the levying of a rate on the rateable property in the municipality or any part of it, shall include income and business assessment as defined by *The Assessment Act*, 3-4 Geo. V. c. 43, s. 287.

Rev. Stat. c. 195.

Where the raising and expenditure of money for a particular purpose is authorized by the electors, the council has no power to vary or depart from that purpose: Smith v. Raleigh (1882), 3 O.R. 405; Dillon v. Raleigh (1886), 13 A.R. 53, 64, (1887) 14 S.C.R. 739; Cleary v. Windsor (1905), 10 O.L.R. 333, 335.

A by-law submitted for the assent of the electors, which provides for the raising of one entire sum for the purpose of several works, is invalid unless the money to be raised is for the purpose of carrying into effect a comprehensive scheme, the carrying out of each detail of which is essential to the success of the scheme as a whole. So held in Taprell v. Calgary (1913), 5 A.L.R. 377, 10 D.L.R. 656, 23 W.L.R. 498, 3 W.W.R. 987.

Where the amount which a corporation is authorized to borrow for the purpose of a work is limited, a by-law, which commits the corporation to the construction of work the cost of which will exceed the amount it is authorized to borrow, is invalid: In re Cleary and Ottawa (1913), 5 O.W.N. 370, 673, (1914) 6 O.W.N. 116, 16 D.L.R. 876; In re Ottawa and the Provincial Board of Health (1914), 33 O.L.R. 1, 4, 20 D.L.R. 531.

Recitals.

288.—(1) A money by-law shall recite:

Amount to be raised annually.

(*a*) The amount of the debt intended to be created, and, in brief and general terms, the object for which it is to be created;

The value of the rateable property.

(*b*) The amount of the whole rateable property of the municipality according to the last revised assessment roll, or, in the case of a county, the last revised and equalized assessment rolls of the local municipalities of which the county is composed;

Amount of existing debt.

(*c*) The amount of the debenture debt of the corporation, and how much (if any) of the principal or interest is in arrear.

An important change in the law as to money by-laws was made in the Act, 3-4 Geo. V. c. 43.

Before that enactment it was provided by 3 Edw. VII. c. 19, s. 384 (1) [first enacted by 22 Vict. c. 99, s. 222], that no by-law for contracting a debt should be valid "which is not in accordance with the following provisions and restrictions except . . ." One of these provisions was that the by-law should contain the recitals mentioned in this subsection, and it has been dropped in the new Act. The effect of this is that subs. 1 is only directory. See In re Sells and St. Thomas (1853), 3 U.C.C.P. 286, 291; Ward v. Welland (1899), 31 O.R. 303, 305.

When debentures to be made payable.

(2) The whole debt and the debentures to be issued therefor shall be made payable within the respective periods hereinafter mentioned at furthest from the time when the debentures are issued.

(*a*) If the debt is a bonus in aid of a railway or for the promotion of iron works, rolling mills or works for refining or smelting ores, or is for railways, harbour works or improvements, sewers, gas or waterworks, the purchase or improvement of parks or the erection of high, continuation or public school houses, and the acquiring of land therefor, or for electric light, heat or power works or water privileges or land used in connection therewith, or for acquiring land for a drillshed or armoury, in thirty years.

(*b*) If the debt is for the establishment of a system of public scavenging or for the collection and disposal of ashes, refuse and garbage, in ten years.

(*c*) If the debt is for the purchase of road-making machinery and appliances, in five years.

(*d*) If the debt is for any other purpose, the whole debt, and the debentures to be issued therefor, shall be made payable in twenty years.

Amounts to be raised annually.

(3) Where the principal of the debt is made payable at a fixed date with interest payable annually or semi-annually, the by-law shall provide for the raising in each year during the currency of the debentures, or of any set of them, of—

(*a*) A specific sum, sufficient to pay the interest on the debentures, or on any set of them, when, and as it becomes due; and

(*b*) A specific sum, which, with the estimated interest, at a rate not exceeding 4 per cent. per annum, capitalized yearly, will be sufficient to pay the principal of the debentures, or of any set of them, when, and as it becomes due. 3-4 Geo. V. c. 43, s. 288 (1-3).

It is no objection to a by-law that the enacting clause omits to settle specific sums for the payment of the debt and the interest where a recital and the enacting clause read together make clear what is to be done: In re Caldwell and Galt (1899), 30 O.R. 378.

This case was decided when the law was that no by-law should be valid unless such specific sums were settled by it.

See note to subs. 1.

Where a by-law was passed by the council of a township authorizing the raising of a sum by issuing debentures, to be met by a special rate, to provide a bonus in aid of a railway company payable upon its compliance with certain conditions, no time for compliance being limited, and the debentures were duly executed, but remained unissued in the possession and under the control of a corporation, it was held that until the sale or negotiation of the debentures there was no debt incurred, and that the special rate settled by the by-law was not leviable though the time fixed for payment of some of the debentures had passed: Bogart v. King (1901), 1 O.L.R. 496.

It was held in In re Holmested and Seaforth (1910), 2 O.W.N. 464, that the giving of a guaranty of the payment of debentures of a manufacturing company was not contracting a debt within the meaning of s. 384 of 3 Edw. VII. c. 19, so as to require that the by-law for the giving of the guaranty should provide a rate for the payment of the liability.

The amendment made by 2 Geo. V. c. 40, s. 70, which is now s. 320, supports this view, and was probably suggested by the question raised in that case.

Equal annual instalments of principal and interest.

(4) Instead of the principal being made payable at a fixed date, with interest, payable annually or semi-annually, the by-law may

provide that the principal and the interest shall be combined, and be made payable in, as nearly as possible, equal annual instalments during the period for which the debentures are to run, or that, without combining the principal and interest, the instalments of principal shall be of such amounts that, with the interest in respect of the debt, payable annually or semi-annually, the aggregate amount payable for principal and interest in each year shall be, as nearly as possible, the same. Provided, that each instalment of principal may be for an even $100, $500, or $1,000, or multiple thereof, and notwithstanding anything herein contained, the annual instalments of principal and interest may differ in amount sufficiently to admit thereof. 3-4 Geo. V. c. 43, s. 288 (4). 7 Geo. V. c. 42, s. 3 (1).

Multiples of $100.

The proviso was added by 7 Geo. V. c. 42, s. 3 (1).

Equal Instalments of principal with interest on balances.

(4*a*) Instead of the principal being made payable as hereinbefore in this section provided the by-law may provide that the principal may be repaid in equal annual instalments with interest annually or semi-annually upon the balances from time to time remaining unpaid. 7 Geo. V. c. 42, s. 3 (2).

Amount to be raised annually.

(5) In the cases provided for by subsection 4 and subsection 4*a* the by-law shall provide for raising in each year in which an instalment becomes due, a specific sum sufficient to pay it when and as it becomes due. 3-4 Geo. V. c. 43, s. 288 (5); 7 Geo. V. c. 42, s. 3 (3).

The words "and subsection 4*a*" were added by 7 Geo. V. c. 42, s. 3 (3).

By-law to change mode of issuing debentures.

(6) In the case of a by-law heretofore or hereafter passed, the council may by by-law, without the assent of the electors, authorize a change in the mode of issue of the debentures, and may provide that the debentures be issued with coupons, instead of in amounts of combined principal and interest or *vice versa,* and where any debentures issued under the by-law have been sold, pledged or hypothecated the council, upon again acquiring them,

or at the request of any holder of them, may cancel them, and issue one or more debentures in substitution for them, and make such new debenture or debentures payable by the same or a different mode on the instalment plan, but no change shall be made in the amount payable in each year.

Debentures, when to be dated and issued.

(7) All the debentures shall be issued at one time and within two years after the passing of the by-law, unless on account of the proposed expenditure for which the by-law provides being estimated or intended to extend over a number of years, and of its being undesirable to have large portions of the money in hand unused and uninvested, in the opinion of the council it would be of advantage to so issue them, and in that case the by-law may provide that the debentures may be issued in sets of such amounts, and at such times, as the circumstances require, but so that the first of the sets shall be issued within two years, and all of them within five years, after the passing of the by-law.

Date of debentures.

(8) All the debentures shall bear the same date, except where they are issued in sets, and in that case every debenture of the same set shall bear the same date.

Extension of time for issue.

(9) The Municipal Board, on the application of the council or of any person entitled to any of the debentures, or of the proceeds of the sale thereof, may extend the time for issuing the debentures beyond the two years, or the time for the issue of any set beyond the time authorized by the by-law.

(10) The extension may be made, although the application is not made until after the expiration of the two years or of the time provided for the issue of the set.

Day when by-law to take effect.

(11) Unless the by-law names a later day when it is to take effect, it shall take effect on the day of its passing. 3-4 Geo. V. c. 43, s. 288 (6-11).

A statement in a by-law that it is to come into force "on or after" a certain day is a sufficient compliance with R.S.B.C. (1897), c. 144, s. 68 (1), which requires that the by-law shall name a day in the financial year on which it shall become operative: In re Arthur and Nelson (1898), 6 B.C.R. 323.

Assent of electors when required.

289.—(1) Except where otherwise provided by this or any other Act, a corporation shall not incur any debt the payment of which is not provided for in the estimates for the current year, unless a by-law of the council authorizing it has been passed with the assent of the electors. 3-4 Geo. V. c. 43, s. 289 (1).

What the effect of this section, read with ss. 297-8, is, it is difficult to say.

While it might be easy, in the case of a small village or rural municipality, for a person who was making arrangements to supply something required by the corporation, or to do work for it, to ascertain whether the debt to be incurred was provided for in the estimates for the current year, it would be difficult for him to do so in the case of towns and cities, and in the case of a large city practically impossible. The practice, and it is the only practicable way of dealing with such matters, is to provide in the estimates lump sums for various services without, in many cases, giving or being able to give minute details as to the purposes for which the lump sum is to be applied. It is difficult for one to imagine a tradesman to whom an order had been given for, say, 10,000 feet of lumber, wending his way to the City Hall and instituting a series of inquiries in order to ascertain whether provision for the discharge of the contemplated liability had been made in the estimates of the year. While theoretically it may be, as was said by Wilson, C.J., in Potts v. Dunnville (1876), 38 U.C.R. 96, 102, of the man who supplied the lumber for the price of which his assignee was suing, "Mr. Smith need have run no risk. He had a right to demand money for the lumber as it was delivered. As he did not do that, he must bear the consequence of his own default," as a business matter that would be impracticable, and what would be the result if, upon inquiry from the proper officials, he were informed and honestly believed that provision had been made in the estimates for enough to pay for the lumber, and, acting upon the faith of what he had been told, he had supplied it, and it should turn out that the information he had received was inaccurate?

The suggestion is ventured that the provisions of s. 289 (1) are directory, and that, at all events, unless the person dealing with the corporation has notice that the liability to him is being incurred in contravention of the law, he would be entitled to recover the consideration he was to receive for what he had supplied or for the services he had rendered.

A liability incurred in one year to be met in a succeeding year would, of course, stand on a different footing. In such a case the person dealing with a corporation must be taken to know the law, and he would, therefore, know that the corporation had no right to incur a debt not to be met during the year in which it is incurred unless authorized by by-law assented to by the electors.

The view that has been expressed is opposed to that entertained and given effect to in the early years after the establishment of municipal institutions. Their establishment was deemed to be an experiment, and was thought by some, perhaps by many, to be a dangerous one, and it was not strange that in those years Judges, most of whom before going on the bench had entertained that view, should be disposed to limit as far as possible the powers conferred by the legislature upon municipal bodies and to assume to exercise a paternal control over their actions.

What has been said as to the status and powers of municipal councils (supra, notes to s. 10) shows the great change that has taken place in the view of the Courts and of the legislature as to municipal bodies and the exercise by them of the powers conferred upon them by the legislature, and as to the jurisdiction of the Courts over their actions when there is neither an absence of jurisdiction nor bad faith.

The following cases may also be referred to:—

Scott v. Peterborough (1860), 19 U.C.R. 469.
Cross v. Ottawa (1864), 23 U.C.R. 288.
Frontenac v. Kingston (1871), 30 U.C.R. 584.

It is suggested that an amendment to the Act might well be made providing that a person supplying goods to or performing work for a municipal corporation, to be paid for during the current year, should not be bound to inquire whether the corporation had money in hand to discharge its obligation or had provided for it in the estimates for the then then current year, and that in such a case the liability is a debt for the payment of which the council must provide in that or the succeeding year.

Other Cases.

Ontario.

A corporation may with the assent of the electors borrow money to repay money unlawfully borrowed when the expenditure, although not included in the estimates, was for purposes within the general powers of the corporation: FitzGerald v. Molsons Bank (1898), 29 O.R. 105.

In Horrigan v. Port Arthur (1909), 1 O.W.N. 216, 14 O.W.R. 1087, it was held that a contract for the supply of electric power and energy by the Hydro-Electric Power Commission of Ontario under the authority of 7 Edw. VII. c. 19, and the amendments to it, being a contract which would create a liability on the part of the corporation for money not required for its ordinary expenditure and not payable within the year, could not be entered into except under the authority of a by-law assented to by the electors.

Quebec.

Where the law governing a municipality directs that all resolutions concerning payments not provided for by votes of credit must first be submitted to the finance committee, the direction must be observed on pain of nullity: Farwell v. Sherbrooke (1904), Q.R. 25 S.C. 203.

The prohibition against authorizing an expenditure "until the particular price thereof and the cost have been submitted to the council and approved by two-thirds of its members," is not violated by the purchase of something required for a department, *e.g.*, the water service, if the price can be taken out of an amount already properly voted for the enlargement, improvement, unforeseen expenses, inspection, etc., of the service: Masse v. Ekers (1909), Q.R. 35 S.C. 424.

A resolution of a municipal council to cancel a contract for the construction of a building that has been commenced and to indemnify the contractor for expenses, labour and damages, is *intra vires* and valid even though there are no disposable funds for the purpose and no provision is made to levy them by a special assessment during the year. The contractor may, therefore, recover the amount of promissory notes signed by the mayor and secretary-treasurer under the authority of the resolution: Ethier v. Ste. Rose (1911), Q.R. 39 S.C. 458.

Exceptions.

(2) Subsection 1 shall not apply to a by-law passed—

(*a*) Under section 290; or

Rev. Stat. c. 193.

(*b*) Under *The Local Improvement Act;* or

(*c*) By the council of a county, or of a city which forms part of a county for judicial purposes, for raising money for erecting, rebuilding, enlarging, furnishing and equipping court house and offices to be used in connection therewith, a gaol, a gaolor's residence and a registry office, and for acquiring such land and buildings as may be necessary or convenient for such purposes. This clause shall be deemed to have been in force from the 1st day of July, 1913;

(*d*) By the council of a city or a separated town for raising such sum as is required to pay its share of the debt of the county as agreed upon or determined by arbitration; or

(*e*) By the council of a city with the approval of the Municipal Board for raising such sum as may be required to pay its share of the cost of constructing or reconstructing a bridge over any stream which constitutes a dividing line between the city and any other municipality or of reconstructing any existing bridge within the municipality; but the aggregate amount to be raised for all of such purposes in any one year shall not be more than $10,000 where the city has a population of not more than 20,000; or $15,000 where the city has a population of more than 20,000 and not more than 100,000; or $20,000 where the city has a population of more than 100,000; or

(*f*) By the council of any municipality, with the approval of the Municipal Board, for raising such sum as is required to pay the share ordered to be paid by the corporation of the cost of any work constructed under the order of the Board of Railway Commissioners of Canada or of the Municipal Board or of any work or improvement which, in the opinion of the Municipal Board, has been rendered necessary or expedient, owing to the construction of any work ordered by either of the boards; or

(*g*) By the council of an urban municipality for raising such sum as may be required for the purchase of a site in the municipality for an armoury or drill-shed for any militia or volunteer corps having its headquarters in the municipality, if the by-law is passed by a vote of two-thirds of all the members of the council; or

(*h*) By the council of a county for guaranteeing debentures of a local municipality; or

Before the enactment of this provision it was held that the assent of the electors was not necessary: In re Kerr and Lambton (1896), 27 O.R. 334.

(*i*) By the council of a town or village for purchasing fire engines, appliances, apparatus and appurtenances as provided by paragraph 1 of section 407; or

Rev. Stat. c. 266.
Rev. Stat. c. 268.
Rev. Stat. c. 269.

(*j*) For borrowing money for any of the purposes mentioned in sections 43 or 44 of *The Public Schools Act*, or section 38 of *The High Schools Act*, or subsection 2 of section 3 of *The Continuation Schools Act;* or (*k*) For borrowing a sum not exceeding $5,000 for the purpose of making a grant to the University of Toronto; or

(*l*) Under paragraph 11 of section 483; or

(*m*) For borrowing any sum or incurring any debt which under the provisions of *The Public Health Act* may be borrowed or incurred without the assent of the electors. 3-4 Geo. V. c. 43, s. 289 (2); 5 Geo. V. c. 34, s. 18; 6 Geo. V. c. 39, s. 4.

Rev. Stat. c. 218.

subs. 1 does not apply also to a by-law passed under s. 500, or to by-laws passed under s.s. 517, and 519.

Contracts for supply of a public utility. Rev. Stat. c. 204.

(3) A municipal corporation may enter into any contract for the supply of a public utility as defined by *The Public Utilities Act*, to the corporation or to the inhabitants thereof for any period not exceeding 10 years in the first instance and for renewing such contract from time to time for further periods not exceeding 10 years at any one time if a by-law setting forth the terms and conditions of such contract has been first submitted to and has received the assent of the municipal electors in the manner provided by this Act. 3-4 Geo. V. c. 43, s. 289 (3).

An agreement between a corporation and a company, authorized by by-law, whereby the company "agreed to supply" the corporation "with electric arc lights, to supply and maintain electric current, lamp poles, conductors, attachments and all plant and apparatus required in connection with the said lights and with electric current for power and lighting for municipal purposes," and to furnish electric current for power to private users in and near Brantford at prices not to exceed a stated minimum, is not open to objection on the ground that the by-law was not sanctioned by the electors or as being a by-law for raising money not required for the ordinary expenditure of the municipality and not payable within the same municipal year," within the meaning of 3 Edw. VII. c. 19, s. 389. The agreement was also held to be authorized by s. 568 of 3 Edw. VII. c. 19, which enabled a council to contract "for a supply of gas or electric light for street lighting and other public uses for any number of years not in the first instance exceeding ten, and for renewing such contract from time to time for such period not exceeding ten years as the council may desire": Hogan v. Brantford (1909), 1 O.W.N. 226, 14 O.W.R. 1117. This case was decided under the law as it stood before 9 Edw. VII. c. 75, which made it necessary, as does subs. 3 of s. 289, that such a by-law should be assented to by the electors, came into force.

Where a person having in his hands for sale debentures of a municipal corporation under an arrangement with him entered into by a committee of the council, to which the matter had been referred, with power to act, paid, on orders signed by the mayor and the secretary-treasurer, and sealed with the seal of the corporation, a debt of the corporation to a bank which was pressing for payment, it was held that, notwithstanding that the council had adopted the report of the transaction by the committee, the amount paid could not be recovered from the corporation; that the transaction was, in effect, a loan of money, and the corporation was restricted by statute from borrowing except under the authority of a by-law: MacArthur v. Portage La Prairie (1893), 9 Man. L.R. 588.

A resolution of a council to purchase land for municipal purposes, to be paid for by applying the future taxes of the vendor for that purpose, is illegal. A by-law assented to by the electors is necessary to authorize such a contract to be entered into according to the provisions of The Town Act of Alberta, c. 2 of 1911-2: Manning v. Bergman (1915), 25 D.L.R. 797, 32 W.L.R. 519, 9 W.W.R. 220 (Alta.).

In the same case a mandatory order to the corporation to carry out the terms of the arrangement and requiring the mayor to put to the council a resolution purporting to provide for the purchase money in the estimates of the current year was refused.

Where a company which had, under a municipal by-law, confirmed by statute, the exclusive privilege of manufacturing and selling gas in the municipality for a term of years, was authorized by statute, in substitution for gas or in connection with or in addition to gas, to manufacture, use and sell electric, galvanic or other artificial light and to manufacture, store and sell heat and motive power derived either from gas or otherwise . . . with the same privilege and subject to the same liabilities as are applicable to the manufacture, use and disposal of illuminating gas under the Act which confirmed the by-law, the company has not the exclusive right to manufacture and sell electric light. The right granted by the Act did not confer such a monopoly, but a new privilege as to electricity wholly unconnected with the former purposes of the company: La Compagnie pour l'Eclairage au Gaz de St. Hyacinthe v. La Compagnie des Pouvoirs Hydrauliques de St. Hyacinthe (1895), 25 S.C.R. 168.

A municipal corporation which lets a contract for lighting the municipality for a period of ten years, with an agreement that it will give the contractor the preference over any other person tendering at the end of the term at the rates quoted in the competing tender for another period of ten years, is a contract for a period not of twenty years, but of ten only, at the expiration of which it ceases and is determined, and will not prevent the corporation, at the end of the first term, establishing its own lighting system under the statutory powers which it possesses: Ricard v. Grand'Mere (1913), Q.R. 23 K.B. 97, (1914) 50 S.C.R. 122, 20 D.L.R. 768.

Special power of county to borrow.

290.—(1) A county council may in any year borrow any sum or sums not exceeding in the whole $20,000 over and above what is required for its ordinary expenditure and over and above any sum which the council is by this Act or any other Act expressly authorized to borrow without the assent of the electors.

Passing of by-law.

(2) Subject to subsection 3 the by-law shall be passed at a meeting specially called for the purpose of considering it, and held not less than six weeks after the first publication of a notice of the day appointed for the meeting which shall be published once a week for four successive weeks, and shall state the amount to be borrowed, and the purpose for which it is to be borrowed.

(3) The by-law may be passed at any regular or special meeting to which the consideration of it may be adjourned. 3-4 Geo. V. c. 43, s. 290.

When rate of interest may be increased.

291. Where, owing to an advance in the rate of interest between the passing of a money by-law heretofore or hereafter passed, and the sale or other disposal of the debentures, they or any of them cannot be sold or disposed of, except at a discount involving a substantial reduction in the amount required to be provided, the council may, with the approval of the Municipal Board, and without submitting the same for the assent of the electors, pass a by-law to amend the first-mentioned by-law, by providing for an increased rate of interest, and for a corresponding increase in the amount to be raised annually. 3-4 Geo. V. c. 43, s. 291.

In Saskatchewan, where there does not appear to be a provision that a power such as that conferred by this section may be exercised without submitting the by-law for the assent of the electors, it was held, in Canadian Agency v. Tanner (1913), 6 S.L.R. 152, 11 D.L.R. 472, 24 W.L.R. 71, 4 W.W.R. 467, that it was unnecessary to submit a by-law increasing the rate of interest for the assent of the electors.

Repeal of by-law, when part only of money raised.

292.—(1) Where part only of a sum of money provided for by a by-law has been raised, the council may repeal the by-law as to any part of the residue, and as to a proportionate part of the amounts to be raised annually.

When to take effect.

(2) The repealing by-law shall recite the facts on which it is founded, shall be appointed to take effect on the 31st day of December in the year of its passing, shall not affect any rates due, or penalties incurred before that day and shall not take effect until approved by the Municipal Board. 3-4 Geo. V. c. 43, s. 292.

Until debt paid certain by-laws cannot be repealed.

293. Subject to the next preceding section, after a debt has been contracted under a by-law, the council shall not, until the debt and interest have been paid, repeal the by-law or any by-law appropriating for the payment of the debt or the interest, the surplus income from any work or any interest therein, or money from any other source; and shall not alter any such by-law, so as to diminish the amount to be raised annually, and shall not apply to any other purpose any money of the corporation which has been directed to be applied to such payment. 3-4 Geo. V. c. 43, s. 293.

Penalty for neglect of officer to carry out by-law

294. Any officer of a corporation, whose duty it is to carry into effect any of the provisions of a money by-law who neglects or refuses to do so, under colour of a by-law illegally attempting to repeal or amend it, so as to diminish the amount to be raised annually under it, shall incur a penalty not exceeding $100. 3-4 Geo. V. c. 43, s. 294.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O. c. 90: see s. 498 (1).

Application for approval of by-law by Municipal Board.

295.—(1) The council of a municipality which has heretofore passed or shall hereafter pass a money by-law, or a by-law imposing a special assessment or a special rate under this or any other Act, or the holder of any debenture issued under any such by-law or any person entitled to receive any of such debentures or of the proceeds of the sale thereof, may apply to the Municipal Board for a certificate approving the by-law.

Certificate not to be granted while proceedings pending.

(2) A certificate shall not be granted while any action or proceeding in which the validity of the by-law is called in question,

or by which it is sought to quash it, is pending, or until thirty days after the final passing of the by-law, unless notice of the application shall be given in such manner and to such persons, if any, as the Board may direct.

Board may grant certificate upon proof of substantial compliance with law.

(3) The Board may grant the certificate notwithstanding any irregularity in the proceedings prior to the final passing of the by-law or in the by-law itself, or where the by-law has been amended by the council to conform with the provisions of the Act under the authority of which it was passed, and except in the case provided for by section 291, the burden on the ratepayers is not increased by the amending by-law, if in the opinion of the Board the provisions of the Act under the authority of which the by-law was assumed to be passed have been substantially complied with. 3-4 Geo. V. c. 43, s. 295 (1-3).

Approval of by-laws in matters requiring approval of Board of Health.

(3*a*) In the case of a by-law for raising money for any of the works or purposes mentioned in sections 89 and 94 of *The Public Health Act*, the Board may, upon the presentation of a certificate of the Provincial Board of Health approving the said works, grant a certificate approving the by-law, notwithstanding that the certificate of approval by the Provincial Board of Health was not obtained prior to the passing of the by-law, or that the by-law does not contain a recital of such approval. This subsection shall be deemed to have been in force since 24th March, 1911. 4 Geo. V. c. 33, s. 8.

By-law and debentures not to be open to question after approval.

(4) Every by-law approved by the Board and the debentures issued or which may thereafter be issued in substantial conformity with its provisions, shall be valid and binding upon the corporation and upon the property liable for the rate imposed by or under the authority of the by-law, and the validity of the by-law and of every such debenture shall not thereafter be open to question in any Court.

This subsection is to be interpreted as meaning that the Court cannot question a by-law which has been approved by the Municipal Board if the approval is in existence when the Court is called upon to decide.

When the motion was launched, the by-law in question stood approved, but an order approving it had been rescinded by the Board before the motion was heard, and, the Court being of opinion that the by-law was invalid, quashed it: In re Harper and East Flamborough (1914), 32 O.L.R. 490, 22 D.L.R. 547.

Approval of debentures.

(5) Where a by-law has been approved the Board may also approve the debentures issued or which may thereafter be issued under the authority of the by-law, and every debenture so approved shall be valid and binding upon the corporation and upon the property liable for the rate imposed by or under the authority of the by-law and the validity of any debenture so approved shall not be open to question in any Court.

Form of certificate.

(6) The certificate may be in the following form:

"In pursuance of *The Municipal Act*, the Ontario Railway and Municipal Board hereby certifies that the within by-law (*or* debenture) is valid and binding, and that its validity is not open to be questioned in any Court on any ground whatever.

"Dated *Chairman.*"
(Seal.)

3-4 Geo. V. c. 43, s. 295 (4-6).

Under s. 207 of The City Act, R.S. Sask. 1909, c. 84, the discretion of the minister of municipal affairs to grant a certificate approving a by-law authorizing the borrowing of money is absolute, and the validity of the by-law cannot be attacked in any Court: Canadian Agency v. Tanner (1913), 6 S.L.R. 152,, 11 D.L.R. 472, 24 W.L.R. 71, 4 W.W.R. 467.

The provisions of The Saskatchewan Act under consideration in this case were substantially the same as those of subsections 3 and 4.

REGISTRATION OF MONEY BY-LAWS.

Money by-laws to be registered.

296.—(1) Within four weeks after the passing of a money by-law the clerk shall register a duplicate original or a copy of it certified under his hand and the seal of the corporation, in the case of a county, in the registry division in which the county town is situate, and, in the case of a local municipality, in the registry division in which it is situate, or if the municipality comprises parts of two or more registry divisions in either of them.

(2) A clerk who neglects to perform within the prescribed period the duty imposed upon him by subsection 1 shall incur a penalty of $200, recoverable by action, and, in default of payment, shall be liable to imprisonment for such period not exceeding twelve months, as the Court may direct.

Penalty.

(3) Notice, Form 24, of the registration of every such by-law, except a by-law which has received the assent of the electors, or a by-law mentioned in subsection 4, shall immediately after its registration be published at least once a week for three successive weeks.

Publication of notice.

(4) It shall not be obligatory to register a by-law for the issue of debentures passed under *The Municipal Drainage Act* or under *The Local Improvement Act*. 3-4 Geo. V. c. 43, s. 296 (1-4).

Exception as to certain by-laws. Rev. Stat. c. 198. Rev. Stat. c. 193.

(5) Every by-law registered in accordance with the provisions of subsection 1, or before the sale or other disposition of the debentures issued under it, and the debentures shall be valid and binding, according to the terms thereof, and the by-law shall not be quashed, unless within one month after the registration in the case of by-laws to which subsection 4 applies, and in the case of other by-laws, within three months after the registration or where publication of the notice provided for by subsection 3 is required within three months after the first publication of the notice, an application or action to quash the by-law is made to or brought in a Court of competent jurisdiction, and a certificate under the hand of the proper officer of the Court and its seal, stating that such application has been made or action brought is registered in such registry office within such period of three months, or one month as the case may be. 3-4 Geo. V. c. 43, s. 296 (5); 5 Geo. V. c. 34, s. 19 (1).

Application to quash registered by-law—when to be made.

(6) After the expiration of the period prescribed by subsection 5, if no application or action to quash the by-law is made or

Time when by-law to be valid and binding.

brought, the by-law shall be valid and binding according to its terms.

This subsection applies to a by-law which has been submitted to the electors as well as one which has not been submitted: In re McClelland and Sutton (1904) 3 O.W.R. 278.

(6*a*) If an application or action to quash the by-law is made or brought within the period prescribed by subsection 5, but part only of the by-law is sought to be quashed, the remainder of it, if no application or action to quash it is made or brought within that period, shall after the expiration of that period be valid and binding according to its terms.

(6*b*) If the application or action is dismissed in whole or in part a certificate of the dismissal may be registered, and after such dismissal and the expiration of the period prescribed by subsection 5, if it has not already expired, the by-law or so much of it as is not quashed, shall be valid and binding according to its terms. 5 Geo. V. c. 34, s. 19 (2).

Illegal by-laws not validated.

(7) Nothing in this section shall make valid a by-law, which requires, but has not received, the assent of the electors, or a by-law where it appears on the face of it that any of the provisions of subsections 2, 3, 4 and 6 of section 288 have not been substantially complied with. 3-4 Geo. V. c. 43, s. 296 (7).

Before the enactment of this provision the law was otherwise: Georgetown v. Stimson (1892), 23 O.R. 33.

(8) Failure to register a by-law or to publish notice of the registration of a by-law, as prescribed by this section, shall not invalidate it. 3-4 Geo. V. c. 43, s. 296 (8); 5 Geo. V. c. 34, s. 19 (3).

PART XIII.

YEARLY RATES AND ESTIMATES.

Yearly rates to be levied, sufficient to pay all debts payable within the year.

297.—(1) Subject to subsection 13 of section 397, the council of every municipality shall in each year assess and levy on the whole rateable property within the municipality, a sum sufficient to pay all debts of the corporation, whether of principal or interest, falling due within the year, but shall not assess and levy in any year more than two and a half cents in the dollar on the assessed value of such property according to the last revised assessment roll, exclusive of school and local improvement rates. 3-4 Geo. V. c. 43, s. 297 (1); 7 Geo. V. c. 42, s. 4.

Limit of rates.

The words "two cents" were struck out and the words "two and a half cents" substituted by 7 Geo. V. c. 42, s. 4.

Where aggregate rates insufficient.

(2) If the aggregate amount of the rates necessary for payment of the current annual expenditure of the corporation, and the principal and interest of such debts exceeds the rate mentioned in subsection 1, the council shall assess and levy such further sum as may be necessary to discharge such debts, but shall not contract any futher debt until the annual rates are reduced to that rate. 3-4 Geo. V. c. 43, s. 297 (2).

See McDougall v. The Water Commissioners of the City of Windsor (1900), 27 A.R. 566, (1901) 31 S.C.R. 326, referred to in notes to s. 8.

See also notes to s. 289 (1).

Where there is no deliberate intention on the part of a School Board to postpone the payment of debts in one year to the next, but an obligation arises from an insufficient estimate, and the board has had to borrow to pay the necessary expenses for maintaining the school, that money may be regarded during the next year as a sum required for the maintenance of the school "for the ensuing twelve months" within the meaning of this Act: In re Athens High School Board and Rear of Yonge and Escott (1913), 29 O.L.R. 360, 14 D.L.R. 543, following Attorney-General v. Lichfield (1848), 17 L.J. Ch. 472; Jones v. Johnson (1850), 5 Ex. 862; and Haynes v. Copeland (1868), 18 U.C.C.P. 150.

See also notes to s. 257 (2).

Estimates to be made annually.

298.—(1) The council of every municipality shall, in each year, prepare estimates of all sums required for the purposes of the municipality during such year, making due allowance for the cost of collection, and for the abatement of taxes and for taxes which may not be collected.

See notes to s. 289 (1).

By-laws for levying rates.

(2) One by-law or several by-laws for assessing and levying the rates may be passed as the council may deem expedient. 3-4 Geo. V. c. 43, s. 298.

If the amount collected falls short.

299.—(1) Where the amount collected falls short of the sum required, the council may direct that the deficiency be made up from any unappropriated fund, or, if there is no such fund, the deficiency may be deducted proportionately from the sums estimated, or from any one or more of them.

Estimates may be reduced.

When sums collected exceed estimate.

(2) Where the amount collected exceeds the estimates, the surplus shall form part of the general funds, and shall be at the disposal of the council, unless otherwise specially appropriated. 3-4 Geo. V. c. 43, s. 299.

Rates to be due on January 1st.

300. The rates imposed for any year shall be deemed to have been imposed and to be due on and from the 1st day of January of such year unless otherwise expressly provided by the by-law by which they are imposed. 3-4 Geo. V. c. 43, s. 300.

In Chamberlain v. Turner (1881), 31 U.C.C.P. 460, referring to section 347 of R.S.O. 1877, c. 174, which provided that the taxes of the year shall be considered to have been imposed and to be due on and from the first of January, etc., Wilson, C.J., said "the section referred to cannot be given effect to in the terms in which it is expressed. The *taxes* may be considered to have been imposed and to be due on and from the first of January, etc., after they have been ascertained and declared, but not before, for until then they have no existence—that is, the taxes, when imposed, shall have a retroactive effect and be due at that antecedent period, and that may be so consistently and properly enough in computing the time for the sale of lands in arrears for taxes as in . . . or in arrangements between landlord and tenant, vendor and purchaser and perhaps in other cases.

"But when the statute says that the taxes shall not only be considered to have been imposed, but to be *due* on and from the first of January, etc., it cannot mean that, because not only are there no taxes until they are fixed, but because they cannot be sued or distrained for until a demand has been made for them by the collector": pp. 470-1.

PART XIV.

RESPECTING FINANCES.

Surplus revenues from a municipal waterworks system which have been paid over to the treasurer of the municipality under s. 43 of The Public Utilities Act, R.S.O. c. 204, must remain at the credit of the special account until the commissioners determine that they are not required for the purpose of the system, and then and then only may they be used for other municipal purposes. In re Berlin and Breithaupt (1914), 6 O.W.N. 423.

ACCOUNTS AND INVESTMENTS.

Accounts, how to be kept.

301. Every council shall keep a separate account of every debt and shall also keep two additional accounts in respect thereof, one for the interest and the other for the sinking fund or the instalments of principal, and both to be distinguished from all other accounts by a prefix designating the purpose for which the debt was contracted; and the accounts shall be kept so as to exhibit at all times the state of every debt, and the amount of money raised, obtained, and appropriated for payment of it. 3-4 Geo. V. c. 43, s. 301.

Application of surplus money.

302.—(1) If, in any year, after paying the interest, and appropriating the necessary sum to the sinking fund, or in payment of the instalments there is a surplus properly applicable to such debt, is shall so remain until required in due course for the payment of interest or for the sinking fund, or in payment of the principal:

Money levied for a sinking fund not to be diverted.

(2) No money collected for the purpose of a sinking fund shall be applied towards paying any part of the current or other expenditure of the corporation.

Liability of members for diversion of sinking fund.

(3) If the council applies any of such money in paying current or other expenditure, the members who vote for such application shall be personally liable for the amount so applied, which may be recovered in any Court of competent jurisdiction.

In Seymour v. Plant (1904), 7 O.L.R. 467, it was held that subs. 2 and 3 do not apply to debentures payable in annual instalments, there being in such a case "no sinking fund."

This provision was applied in Reg. ex rel. Cavanagh v. Smith (1895), 26 O.R. 632.

Action by ratepayer.

(4) If the council, upon the request in writing of a ratepayer, refuses or neglects for one month to bring an action therefor, the action may be brought by any ratepayer on behalf of himself and all other ratepayers.

Disqualification.

(5) The members who vote for such application shall be disqualified from holding any municipal office for two years.

Statement of treasurer as to amount required for sinking fund.

(6) The treasurer of a municipality in which any sum is required by law to be raised for a sinking fund, shall prepare and lay before the council in every year, previous to the striking of the annual rate, a statement showing what amount will be required for that purpose.

Penalty.

(7) For every contravention of subsection 6, the treasurer shall incur a penalty not exceeding $25.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O. c. 90. See s. 498 (1).

Penalty where council neglects to levy for sinking fund.

(8) If the council neglects in any year to levy the amount required to be raised for a sinking fund, each member of the council shall be disqualified from holding any municipal office for two years, unless he shows that he made reasonable efforts to procure the levying of such amount. 3-4 Geo. V. c. 43, s. 302.

Members of a municipal council who, acting in good faith and under a misapprehension as to the effect of a statute, unlawfully apply money of the corporation in defraying the cost of a work which ought to be met by a special assessment under the local improvement provisions of The Municipal Act, were held to be not liable to repay the money so applied, and the opinion was expressed that 62 Vict. (2) c. 15, s. 1, applied, but that, if it did not, they should not be more hardly dealt with than ordinary trustees, and should be treated as within the equity of that statute: King v. Mathews (1903), 5 O.L.R. 228.

Investment of sinking fund.

303. Subject to the provisions of sections 304 and 305, the council shall invest the sinking fund in such securities as a trustee may invest in under *The Trustee Act*, or with the approval of the Municipal Board in any debentures of the corporation. 3-4 Geo. V. c. 43, s. 303.

Rev. Stat. c. 121.

Redemption of debentures with sinking fund.

304. The Municipal Board, on the application of a council, may direct that any part of the sinking fund, instead of being invested as hereinbefore provided, shall, from time to time, be applied to the redemption of any of the debentures, to the payment of which such sinking fund is applicable, to be selected as provided by the order of the Board, at such value as may be agreed on by the council and the holders of the debentures. 3-4 Geo. V. c. 43, s. 304.

Payment of sinking fund into Provincial Treasury.

305.—(1) A council may provide by a money by-law that the annual amount to be levied on account of the sinking fund shall be paid by the treasurer of the municipality to the Treasurer of Ontario, and if the by-law does not provide for such payment the council may pass a by-law providing therefor.

Treasurer may allow interest on funds in his hands.

(2) Where a council avails itself of the right conferred by the next preceding subsection, the Treasurer of Ontario may receive from the treasurer of the municipality the annual amounts so levied on account of the sinking fund and allow and credit the municipality with interest thereon at the rate of four per cent. per annum, compounded yearly until the time when the debentures to which the sinking fund is applicable become payable and the sinking fund is required for their redemption.

The provisions of subsection 2 as to the rate of interest to be allowed are superseded by section 2 of *The Current Rate of Interest Act*, 7 Geo. V. c. 8, which is as follows:—

> 2. Notwithstanding anything in any Act contained fixing the rate of interest to be paid or credited to any municipal or school corporation by the Treasurer of Ontario upon municipal or school securities, sinking funds or debentures deposited with or in the hands of the Treasurer of

Ontario, either as an investment by the Province or for investment on behalf of a municipal or school corporation, the rate at which interest shall be allowed to, paid by, or credited to a municipal or school corporation, upon any such securities, sinking funds or debentures hereafter deposited with or purchased by the Treasurer of Ontario shall be the current rate of interest as fixed from time to time by the Lieutenant-Governor in Council, to be based upon the average rate of interest actually payable upon the moneys borrowed on behalf of Ontario as a Provincial loan and then outstanding.

Money so received to form part of Consolidated Revenue.

(3) All money received by the Treasurer of Ontario under the provisions of this section shall form part of the Consolidated Revenue Fund, and a statement of the amount at the credit of each municipality shall be set forth annually in the Public Accounts of Ontario.

Sinking fund may be invested in the debentures to be redeemed.

(4) The Treasurer of Ontario may invest the amount at the credit of a municipality or any part thereof in the debentures of such municipality, to redeem which such sinking funds were paid to the Treasurer.

Amount payable into sinking fund to be a debt to the treasurer.

(5) The amount payable in any year into the sinking fund which under the provisions of the by-law is to be paid to the Treasurer of Ontario shall be deemed a debt due to him and in default of payment thereof he may sue therefor in his own name as for a debt due to the Crown in any Court of competent jurisdiction. 3-4 Geo. V. c. 43, s. 305.

Disposition of sinking fund paid to treasurer.

(6) Upon the maturity of the debentures to redeem which a sinking fund has been paid to the Treasurer, the amount to the credit of the sinking fund shall be payable out of the Consolidated Revenue Fund upon the order of the Treasurer to the holder of the debentures or to his agent or into a bank or otherwise according to the tenor of the debentures or as the Treasurer may direct. 5 Geo. V. c. 34, s. 20.

Money by-laws to be sent to Provincial Treasurer.

306. Every corporation the council of which shall hereafter pass a money by-law shall within thirty days after the final passing of the by-law transmit a certified copy of it to the Treasurer of Ontario. 3-4 Geo. V. c. 43, s. 306.

Annual return as to sinking fund.

307. Where by any by-law heretofore or hereafter passed provision is made for raising a sinking fund to meet the debentures to be issued under the authority of the by-law the council in each year in which a sinking fund is required to be raised shall transmit to the Treasurer of Ontario a return showing whether the sinking fund for the year has been raised and how it has been applied or dealt with, and the state of the investment of any part of the sinking fund theretofore collected, which return shall be verified by the affidavit or statutory declaration of the head and the treasurer of the municipality. 3-4 Geo. V. c. 43, s. 307.

Penalty.

308. A corporation the council of which does not comply with the provisions of the next two preceding sections shall incur a penalty not exceeding $100. 3-4 Geo. V. c. 43, s. 308.

This penalty is recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O. c. 90. See s. 498 (1).

Certain money may be set apart for educational purposes.

Investment of same.

309.—(1) Where a corporation has surplus money derived from "The Ontario Municipalities Fund," or from any other source, the council may set it apart for educational purposes and may invest it as well as any other money held by the corporation for, or appropriated by it to such purposes, in the securities mentioned in section 303, or may lend the same to any board of public school trustees in the municipality for such term and at such rate of interest as may be agreed upon, or may apply any part of such money in aid of poor school sections in the municipality. 3-4 Geo. V. c. 43, s. 309.

Apportionment of public school money among school sections in townships.

310. The council of a township may apportion, among the public school sections in the township, the principal or interest of any investments for public school purposes, according to the salaries paid to the teachers, or the average attendance of pupils in the respective school sections during the next preceding year, or according to the assessed value of the property in the section, or by an equal division among the sections. 3-4 Geo. V. c. 43, s. 310.

Prohibition as to unauthorized investment.

311. A member of a council shall not take part in, or be a party to, the investment of any such money, otherwise than as authorized by this Act; and, if he does so, he shall be personally liable for any loss sustained by the corporation in respect of the investment. 3-4 Geo. V. c. 43, s. 311.

Council to make annual report of debts to Bureau of Industries.

312.—(1) Every corporation shall, on or before the 31st day of January in each year, transmit to the Secretary of the Bureau of Industries in such form as may be prescribed by the Lieutenant-Governor in Council a statement as to the debts of the corporation, as they stood on the preceding 31st day of December, specifying, in regard to each debt of which any part remained unpaid on that day—

Section 9 (3) of *The Bureau of Municipal Affairs Act*, 7 Geo. V. c. 14, requires returns to be made to the Director of the Bureau of Municipal Affairs, instead of to the Secretary of the Bureau of Industries.

(*a*) The original amount of the debt;

(*b*) The date when it was contracted;

(*c*) The time fixed for its payment;

(*d*) The interest payable;

(*e*) The amount to be raised annually for the payment of the debt and interest, or the instalments of them;

(*f*) The amount actually raised in the year ended on the 31st day of December;

(*g*) The part (if any) of the debt redeemed or paid during that year;

(*h*) The amount of interest (if any) unpaid on that day; and

(*i*) The amount of principal still unpaid.

(2) For every contravention of subsection 1 the corporation shall incur a penalty not exceeding $40. 3-4 Geo. V. c. 43, s. 312. Penalty.

The penalty is recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O. c. 90. See s. 498 (1).

COMMISSION OF INQUIRY INTO FINANCES.

313.—(1) The Lieutenant-Governor in Council, on the application of one-third of the members of a council or of thirty municipal electors, may issue a commission to inquire into the financial affairs of the corporation and any matter connected therewith and the commissioner shall have all the powers which may be conferred on commissioners appointed under *The Public Inquiries Act*. When a commission of inquiry may issue. Rev. Stat. c. 18.

(2) The expenses of and incidental to the execution of the commission shall be determined and certified by the Treasurer of Ontario, and shall thereupon become a debt due by the corporation to the commissioner, payable within three months after demand therefor. 3-4 Geo. V. c. 43, s. 313. Expenses of commission.

See notes to s. 248.

DEBENTURES.

314.—(1) Subject to subsection 2*a* a debenture or other like instrument shall be sealed with the seal of the corporation, and signed by the head of the council, or by some other person authorized by by-law to sign it, and by the treasurer. 3-4 Geo. V. c. 43, s. 314 (1); 4 Geo. V. c. 33, s. 9 (1). Debentures, how to be executed.

(2) A debenture may have coupons for the interest attached to it which shall be signed by the treasurer, and his signature to them may be written, stamped, lithographed or engraved. 3-4 Geo. V. c. 43, s. 314 (2). Execution of coupons.

(2*a*) In a city having a population of not less than 200,000, the signature of the head of the council of the said corporation to all debentures or other like instruments issued by the said corporation may be written, stamped, lithographed or engraved. 5 Geo. V. c. 33, s. 9 (2). Execution of debentures.

Full amount of debentures sold at a discount recoverable.

(3) A debenture may be made payable to bearer or to a named person or bearer and the full amount of it shall be recoverable notwithstanding its negotiation by the corporation at a discount. 3-4 Geo. V. c. 43, s. 314 (3).

The lender of money to a municipal corporation on its debentures is bound at his own risk to see that the proceedings leading up to their creation and issue are legal and regular: Wiltshire x. Surrey (1891), 2 B.C.R. 79.

Where, after the issue of debentures, new townships were added to a municipality and a town was detached from it, the corporation remains liable on the debentures notwithstanding the alteration of the boundaries: Gillespie v. Westbourne (1888), 10 Man. L.R. 656.

A county corporation empowered to issue, under its corporate seal and signed by the warden and secretary-treasurer, bonds to be wholly chargeable on a parish, the proceeds to be used for a designated purpose, issued the bonds accordingly. The bond was in the form of a certificate that the parish was indebted to the purchaser of the bond pursuant to the statute, and it was held that, notwithstanding the declaration that the parish was the debtor, the county corporation was liable to pay the amount due on the bonds: Grimmer v. Gloucester (1902), 32 S.C.R. 305, reversing (1901), 35 N.B. 255.

The purchaser of debentures is bound to examine the statute under the authority of which they were issued: Hart v. Halifax (1902), 35 N.S. 1.

A sale of debentures at a price below par which has the effect of increasing the rate of interest beyond five per cent. is invalid, as it is, in substance, but a borrowing at the increased rate.

Where such a sale is made, the debentures cannot be invalidated in the hands of a holder in good faith and for value: R.S.Q. art. 4631. Viau v. Maisonneuve (1908), 4 E.L.R. 559 (Que.).

Debentures on which payment has been made for one year to be valid.

315. Where the interest for one year or more on the debentures issued under a by-law heretofore or hereafter passed and the principal of any debenture which has matured has been paid by the corporation the by-law and the debentures issued under it shall be valid and binding upon the corporation. 3-4 Geo. V. c. 43, s. 315.

The effect of this section is to make one payment of interest validate the debenture in respect of which it is paid and one payment of principal validate the series in respect of which it is made: Standard Life v. Tweed (1903), 2 O.W.R. 747, affirmed (1903) 6 O.L.R. 653.

In that case the sum authorized to be raised was $5,000, and five debentures of $1,000 each had been issued and were purchased by the plaintiffs;

all the interest had been punctually paid, and the time for payment of the principal had elapsed, but no rate for the payment of the principal was imposed by the by-law, and the decision was that all the debentures were validated.

Mode of transfer may be prescribed.

316.—(1) Where a debenture contains or has endorsed upon it a provision to the following effect:—

"This debenture, or any interest therein, shall not, after a certificate of ownership has been indorsed thereon by the treasurer of this corporation, be transferable, except by entry by the treasurer or his deputy in the Debenture Registry Book of the Corporation at the of ."

Debenture registry book.

the treasurer, on the application of the owner of the debenture or of any interest in it, shall endorse upon the debenture a certificate of ownership and shall enter in a book, to be called the Debenture Registry Book, a copy of the certificate and of every certificate which is subsequently given and shall also enter in such book a memorandum of every transfer of such debenture.

Requirements as to endorsing certificate of ownership.

(2) A certificate of ownership shall not be endorsed on a debenture, except by the written authority of the person last entered as the owner of it, or of his executors or administrators, or of his or their attorney, which authority shall be retained and filed by the treasurer.

Transfer by entry in registry book.

(3) After a certificate of ownership has been endorsed the debenture shall be transferable only by entry by the treasurer or his deputy in the Debenture Registry Book, as and when a transfer of the debenture is authorized by the then owner of it or his executors or administrators or his or their attorney. 3-4 Geo. 4. c. 43, s. 316.

Borrowing by hypothecation of debentures.

317.—(1) A council, pending the sale of a debenture, or in lieu of selling it, may, by by-law or resolution authorize the head and treasurer to raise money by way of loan on such debenture and to hypothecate it for the loan.

Application of proceeds of loan.

(2) The proceeds of every such loan shall be applied to the purposes for which the debenture was issued, but the lender shall

not be bound to see to the application of the proceeds, and, if the debenture is subsequently sold, the proceeds of the sale shall be applied first in repayment of the loan. 3-4 Geo. V. c. 43, s. 317.

Debentures, etc., not to be for less sums than $100.

318.—(1) Subject to subsection 2 a corporation shall not make or give any bond, bill, note, debenture or other undertaking for the payment of a less amount than $100; and any such bond, bill, note, or debenture, shall be void.

This provision appears to indicate that it was intended that a municipal corporation should have the right to draw bills of exchange and make promissory notes, and it is submitted that they may do so.

It was, however, held by Brown, J., in Pigott v. Battleford (1913), 12 D.L.R. 171, 24 W.L.R. 365 (Sask.), that a town corporation had no authority to make promissory notes even though in payment for services rendered and sealed and signed by the mayor and secretary-treasurer of the corporation on its behalf.

Formerly the right to become parties to bills and notes was almost restricted to commercial corporations; the modern tendency is to extend it to corporations generally: Maclaren on Bills, Notes and Cheques, 5th ed., p. 140.

See also In re Peruvian Railways Company, L.R. (1867), 2 Ch. 617.

The Quebec cases as to the right of municipal corporations to make notes or accept bills are conflicting. In Pacaud v. Halifax South (1866), 17 L.C.R. 56, and in Martin v. Hull (1878), 10 R.L. 232, it was held that they have not that right. The contrary was held in Ledoux v. Mile End (1878), 2 L.N. 37; Grantham v. Couture (1879), 24 L.C.J. 105; La Societe de Construction du Canada v. La Banque Nationale (1880), 3 L.N. 130; Iberville v. Banque du Peuple (1895), Q.R. 4 Q.B. 268; and Ethier v. Ste. Rose (1911), Q.R. 39 S.C. 458, 461-2.

In the United States the Courts have laid down the broad rule that, whenever a corporation can contract a debt for a certain object, it may give a negotiable note or accept a bill of exchange for the amount: Daniel on Negotiable Instruments, 6th ed., pars. 381-3.

Proviso as to debentures issued for sums which include principal and interest.

(2) A debenture heretofore or hereafter issued under the authority of any by-law, providing for payment of principal and interest together yearly so computed and apportioned that the sum of both principal and interest is an equal annual sum of not less than $100, whether the debenture is issued with or without coupons, shall be deemed to be a debenture of not less than $100 within the meaning of this section, and all debentures heretofore

or hereafter so issued under such a by-law and otherwise legal shall be valid. 3-4 Geo. V. c. 43, s. 318.

TEMPORARY LOANS.

Borrowing sums for current expenditure.

319.—(1) A council may either before or after the passing of the by-law for imposing the rates for the current year, authorize the head and treasurer to borrow on such security, if any, as the by-law may authorize, such sums as the council may deem necessary to meet the current ordinary expenditure of the corporation, and the sums required to be raised in the current year for High and Public School purposes until the taxes are collected.

" Current ordinary expenditure."—An outlay not contemplated when the estimates are prepared and for which no provision "either special or as a possible contengency" is made in the estimates for the year cannot be treated as part of the ordinary expenditure to meet which a loan may be effected: Holmes v. Goderich (1902), 5 O.L.R. 33.

See also In re Cartwright and Napanee (1910), 1 O.W.N. 502.

The provisions of the Municipal Code which prohibit municipal corporations from borrowing otherwise than by by-law do not apply to temporary loans for small amounts to provide for immediate wants: Giroux v. Coteau Landing (1899), Q.R. 17 S.C. 271.

Notwithstanding a provision in its charter of incorporation prohibiting loans for general purposes beyond a stated amount or a stated proportion of the assessment of the rateable property within the limits of the municipality, the corporation may make special loans under the provisions of a statute which gives it that power: Juneau v. Levis (1905), Q.R. 14 K.B. 104.

Limit of borrowing power.

(2) The amount so borrowed and outstanding shall not at any time exceed in the case of a county the amount required to be provided for by the county rate for the current year, and in the case of a local municipality the following percentages of its ordinary expenditure for the next preceding year, together with the amount required to be raised for High and Public School purposes for the current year;

(*a*) In the case of a town, village or township, any part of which is situate within 2 miles of a city having a population of not less than 100,000—80 per cent.;

(*b*) In the case of a city and of any other town, village or township—90 per cent.

Disqualification of members voting to exceed limit.

(3) If the council authorizes the borrowing of any larger sum, every member who votes therefor shall be disqualified from holding any municipal office for two years.

Subsection 3 was applied in Rex ex rel. Moore v. Hamill (1904), 7 O.L.R. 600.

Lender not put on inquiry.

(4) The lender shall not be bound to establish the necessity of borrowing the sum lent. 3-4 Geo. V. c. 43, s. 319.

It was held in Fitzgerald v. Molsons Bank (1898), 29 O.R. 105, that the lender, although not bound to inquire as to the necessity for borrowing, was bound, notwithstanding a provision similar to this, to inquire as to the amount of the taxes authorized to be levied to meet the current expenditure, the percentage which was permitted to be borrowed under the legislation then in force being based upon the amount of these taxes.

Temporary advances to meet cost of works.

319*a*. Where by this or any other Act power is conferred on a municipal corporation to borrow money for any purpose without the assent of the electors, it shall include not only the power to borrow money by the issue of debentures, but also the power to agree with any bank or person for temporary advances to meet the expenditure incurred from time to time for such purpose. 4 Geo. V. c. 33, s. 10.

Power to borrow to meet guarantee of debentures.

320. When a corporation has heretofore guaranteed or hereafter guarantees the payment of the principal or interest of any bonds or debentures and default is made in payment of the principal or interest by the person primarily liable therefor, the council of such corporation may agree with any bank or person for temporary advances to meet the amount in default in any one year pending the collection of such amount by a rate on all the rateable property in the municipality, or where the guarantee is by or on behalf of a section or portion of a township, by a rate on all the rateable property in such section or portion. 3-4 Geo. V. c. 43, s. 320.

See notes to s. 288 (3).

PART XV.

ACQUISITION OF LAND AND COMPENSATION.

LAND TAKEN OR INJURIOUSLY AFFECTED.

321. In this Part: Interpretation.

(*a*) "Expropriation" shall mean taking without the consent of the owner, and "Expropriate" and "Expropriating" shall have a corresponding meaning. "Expropriation."

(*b*) "Land" shall include a right or interest in, and an easement over, land; "Land."

(*c*) "Owner" shall include mortgagee, lessee, tenant, occupant, and a person entitled to a limited estate or interest in land, a trustee in whom land is vested, a committee of the estate of a lunatic, an executor, an administrator, and a guardian; "Owner."

(*d*) "The Judge" shall mean, in the case of an arbitration as to the compensation for land expropriated, or for injuriously affecting land, [or where leave to enter on such land is desired under section 324] a Judge of the County or District Court of the county or district in which the land or any part of it is situate, and in the case of any other arbitration, if the corporation of one municipality only is a party to it, a Judge of the County or District Court of the county or district in which the municipality, if it is a local municipality, is situate, or, if it is a county, of that county, and if the corporations of two or more municipalities are parties to the arbitration, a Judge of the Supreme Court. 3-4 Geo. V. c. 43, s. 321; 7 Geo. V. c. 42, s. 5. "The Judge."

The words in brackets were added by 7 Geo. V. c. 42, s. 5.

When a donor declares that he gives a lot of land "less the part expropriated for the enlargement" of a street and when no expropriation has then been made, this clause is null and all the lot belongs to the donor. These words are to be taken in their grammatical sense, that is to say, as referring to the past and not in the sense of "to be expropriated:" Vautelet v. Montreal (1915), Q.R. 49 S.C. 160.

Archibald, J., dissented, being of opinion that when the plaintiff received his deed he did not expect to receive the whole lot as shewn by the exception of the part said to have been expropriated and did not know that there had been an expropriation, and that the exception applied to a part of the lot which the corporation had taken possession of for a street, though legal measures for expropriation were not proved to have been taken. It could not be doubted, said the learned Judge, that "the plaintiff believed at the time that the City had expropriated that portion of the said lot of which it had taken possession and in that case the plaintiff did not expect that he was buying anything in the possession of the City," and his view was that "some interpretation must be given to the clause excepting the part expropriated" and that the proper interpretation was that the exception was to be read as excepting the part appropriated and taken possession of by the City."

Power to acquire or expropriate land.

322.—(1) The council of every corporation may pass by-laws for acquiring or expropriating any land required for the purposes of the corporation, and for erecting buildings thereon, and may sell or otherwise dispose of the same when no longer so required.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

ALBERTA.

Towns, Stats. 1911-2, c. 2, s. 227, R.S. 1915, p. 963.
Villages, Stats. 1913, c. 5, s. 63, par. 50, R.S. 1915, p. 1280.
Rural Municipalities, Stats. 1911-2, c. 3, s. 196, par. 10, R.S. 1915, p. 1050.

BRITISH COLUMBIA.

Stats. 1914, c. 52, s. 54, (155-7), (176-7), (186) ss. 357-378.
Stats. 1915, c. 46, ss. 11, 53. Stats. 1916, c. 44, ss. 14, 16.

MANITOBA.

Rev. Stats. 1913, c. 133, s. 712.

NEW BRUNSWICK.

There is in this province no authority conferred by The Municipal Act to expropriate.

NOVA SCOTIA.

Towns Incorporation Act, Rev. Stats. 1900, c. 71, s. 206.
Chapter 76, Rev. Stats. 1900, ss. 5, 6 (as to roads).

QUEBEC.

Expropriations for municipal purposes are provided for by arts. 787 to 802 (inc.) of the new Municipal Code.

SASKATCHEWAN.

Cities, Stats. 1915, c. 16, s. 355.
Towns, Stats. 1916, c. 19, s. 339.
Villages, Stats. 1916, c. 20, s. 163, pars. 1, 11.
Rural Municipalities, Rev. Stats. 1909, c. 87, s. 198, par. 13.

" Acquiring or expropriating any land"——"There appears to be no incompatibility in the legitimate expropriation by the city of land owned by the railway when that land is not essential to the purposes of the undertaking. That the land may be convenient for the railway purposes would not be, I conceive, an answer to the *bonâ fide* action of the city in employing its expropriating powers": per Boyd, C., in Toronto Railway Company v. Toronto (1906), 13 O.L.R. 533, 537.

In Abbott v. Trenton (1909), 1 O.W.N. 218, 14 O.W.R. 1101, the defendant corporation had agreed with the Government of Canada for a lease of surplus water derived from a dam on the River Trent, and afterwards entered into an agreement with a company for the transfer to it of the lease in order that the water might be used for supplying the corporation and the inhabitants of the municipality with electricity. The agreement was not sanctioned by the electors, and the action was brought by a ratepayer to set aside a by-law that had been passed authorizing the entering into of the agreement and to restrain the company from erecting the works contemplated by it, and that relief was awarded, the Court being of opinion that both s. 565 of The Municipal Act then in force, 3 Edw. VII. c. 19, and s. 2 (1) of 9 Edw. VII. c. 75, now R.S.O. c. 197, made it necessary to the validity of the agreement that it should be entered into under the authority of a by-law assented to by the electors.

Section 565 and s. 564 also were repealed by 3-4 Geo. V. c. 43. By both of them municipal corporations were authorized to acquire water privileges, and by s. 565 they were empowered to use them or to lease the whole or any parts of them and otherwise deal with them as an individual might, but no sale was to be made except under the authority of a by-law assented to by the electors entitled to vote on money by-laws, and no lease was to be granted for more than 30 years "with right of renewal and renewals."

It is probable that these sections were repealed *per incuriam*. However, under the ample powers conferred by s. 322, the right to acquire water privileges is, no doubt, possessed by municipal corporations, but it may be doubtful whether that section confers as wide powers of disposition as s. 565 gave.

The fact that s. 287 (1), cl. (*a*), authorizes borrowing for 30 years in the case of incurring a debt for acquiring "water privileges or land used in connection therewith" indicates that it was not intended to deprive municipal corporations of the power to acquire them, but it would seem to be desirable to re-enact, the repealed sections, with some modifications and changes in form, especially as s. 564 extended to water privileges, etc., within three miles of the municipality, which s. 322 does not, and as The Public Utilities

Act, R.S.O. c. 204, does not confer power to acquire water privileges beyond the limits of the municipality except for waterworks purposes.

In Edmonton v. Macdonald (1907), 7 W.L.R. 201 (Alta.), it was held that the effect of the charter of the city of Edmonton is that, where it is desired to expropriate land, a by-law assented to by the majority of the burgesses voting is requisite.

Section 190 (17) of the Act incorporating the city of New Westminster, 51 Vict. c. 42, which dispenses with the formalities required by former subsections, applies only to cases where land is injuriously affected by access to it being interfered with, and where land is taken or used for the purposes of work on a highway the corporation must comply with the formalities prescribed by subs. 3: New Westminster v. Brighouse (1892), 20 S.C.R. 515 (B.C.).

It is not necessary that an expropriating by-law should provide for the payment of compensation to the landowner: Esquimalt Water Works Company v. Victoria (1904), 10 B.C.R. 193.

Filing plans and specifications and serving notice to treat in an expropriation by a municipal corporation for the purpose of opening a lane constitutes a "taking" of land in the statutory sense entitling the owner to claim compensation under s. 399 of The Municipal Act, R.S.B.C. (1911), c. 170: Hanna v. Victoria (1915), 24 D.L.R. 889, 32 W.L.R. 916, 9 W.W.R. 761, (1916), 27 D.L.R. 213, 34 W.L.R. 307, 10 W.W.R. 457.

It was held in Winnipeg v. Cauchon (1884), Man. L.R. temp. Wood 350, that a municipal corporation, having statutory authority to construct a bridge, but no express power to expropriate lands, has no implied power to do so, even though the lands are absolutely necessary for the purposes of the bridge.

It was held by Mathers, C.J.K.B., that statutory authority for a special survey "for the purpose of fixing the location or width of any road or highway" does not authorize the expropriation of land to widen a highway: Peterson v. Bitulithic and Contracting Company (1912), 23 Man. L.R. 136, 7 D.L.R. 586, 22 W.L.R. 398, 3 W.W.R. 377; but his decision was reversed, on other grounds, (1913) 23 Man. L.R. 136, 12 D.L.R. 444, 24 W.L.R. 19, 4 W.W.R. 223.

A municipal corporation, in expropriating from a ratepayer, should observe the formalities prescribed by the Municipal Code, and the *proces-verbal* in expropriation should describe the land to be expropriated.

Where expropriation is ordered, the municipal authorities should make an agreement with the owner to indemnify him or cause the land to be valued, according to law, by valuators, who act as a court, hearing the parties and their witnesses and giving their award in writing. This course should be pursued even when the value of the expropriated land is offset by the advantage resulting from the expropriation, for the matter should be judicially determined.

Even if the land is taken for a front road ("*chemin de fronte*"), it is necessary, in order that the corporation should be relieved from paying the indemnity for the expropriated land by virtue of art. 906 of the Municipal Code, that the existence of the road should be established by writing, a resolution or a *proces-verbal.*

Godbout v. St. Damien de Buckland (1898), Q.R. 14 S.C. 67.

Where the charter of a municipality contains general provisions respecting the expropriation of an immovable and special provisions authorizing it to make a plan of the municipality, indicating streets and their alignment, and imposing upon the corporation the duty of giving effect to such indications after the homologation of the plan by the Court, the special provisions are to be deemed to be an exception to the general provisions, and the council can by a mere resolution authorize payment for the land indicated and negotiations with the owners pursuant to the resolution without observing the formalities prescribed by the general provisions: Guay v. Marsan (1906), Q.R. 16 K.B. 6, reversing (1905) Q.R. 28 S.C. 145.

A provision of The Town of Vonda Act, Stats. 1908, c. 17, s. 236 (3) (Sask.), that, before taking land, the council . . . shall deposit with the secretary-treasurer plans and specifications showing the lands to be taken or used and the work to be done thereon, and the names of the owners or occupants according to the last revised assessment roll, was held to make this a condition precedent to the exercise of the right to expropriate: In re Vonda and Mantyka (1909), 12 W.L.R. 222 (Sask.).

"Purposes of the corporation."—The words were, before the Act of 1913, "for the use of the corporation," and it was held that they did not mean "for the benefit of," and that a municipal corporation had no authority to purchase land to be presented to the Government as a site for a post office: Jones v. Port Arthur (1888), 16 O.R. 474.

Where a municipal corporation takes possession of land for street widening under an agreement with the owner, the fact that the price to be paid remains subject to be fixed by commissioners under a statute which provides for their appointment is not inconsistent with the validity of the cession of the land, and the corporation is bound within a reasonable time to apply for the appointment of commissioners to fix the amount of the indemnity to be paid, to levy assessments for it, and to pay it over to the owner, and, where it fails to do so, the owner has a right of action to recover indemnity for his land: Fairman v. Montreal (1901), 31 S.C.R. 210 (Que.).

Whether a municipal corporation, with power to purchase and hold real estate for certain purposes, has acquired and is holding such property for other purposes is a question which can only be determined in a proceeding at the instance of the State: Dillon on Municipal Corporations, 5th ed., par. 990.

This was accepted as a correct statement of the law by Middleton, J., in Verner v. Toronto (1912), 3 O.W.N. 586, 1 D.L.R. 530, 21 O.W.R. 170.

It was also held in the same case that the consent required by s. 104 of

The Public Health Act, R.S.O. 1897, c. 248, of the council of the corporation of a municipality, in which land which the corporation of another municipality desires to acquire as a site for an isolation hospital is situate, is not a condition precedent to the right to make the purchase.

Under the present Public Health Act, R.S.O. c. 218, permission to establish, maintain or keep an isolation hospital is to be obtained from the local Board of Health of the municipality in which it is proposed to establish, maintain or keep it, and, if permission is refused, there is an appeal to a Board of Appeal: s. 45 (5).

The statutory power of the council of a city or town to pass by-laws "for acquiring any estate in landed property, within or without the city or town, for an industrial farm," is not exhausted where land has been acquired, but may be exercised for the purpose of acquiring additional land whenever it becomes necessary to do so.

The Interpretation Act, R.S.O. c. 1, s. 28, cl. (*f*), provides that "if a power is conferred . . . the power may be exercised . . . from time to time as occasion requires," and the substantial effect of this provision is to rebut the presumption that the power is exhausted by a single exercise: In re Boyle and Toronto (1913), 5 O.W.N. 97, 25 O.W.R. 67.

The power to acquire land for an industrial farm is now contained in The Industrial Farms Act, R.S.O. c. 292, s. 2 (1).

Sections 223 and 227 of the City Charter (Edmonton, Alta.) prevent the council of the city from committing the corporation to a lease of natural gas rights unless with the assent of the majority of the burgesses: Livingstone v. Edmonton (1915), 24 D.L.R. 191, 31 W.L.R. 609, 8 W.W.R. 976 (Alta.).

This case was affirmed (1915) 9 A.L.R. 343, 25 D.L.R. 313, 33 W.L.R. 107, 9 W.W.R. 794, on the ground that the contract was not authorized by the resolution of the council in pursuance of which it purported to be executed, and had not been ratified by the council.

A by-law authorizing the borrowing of money "to pay for widening, improving and grading certain streets," not naming them, will not support a purchase of land for a street not within the limits of the municipality at the time the by-law was passed.

Nor will by-laws authorizing borrowing "to pay for grading and gravelling streets and purchasing road construction plant and machinery."

So held in Howson v. Medicine Hat, Yuill v. Medicine Hat (1915), 22 D.L.R. 72, 30 W.L.R. 319 (Alta.).

A municipal corporation may acquire the undertaking of a railway under Dominion jurisdiction, but may not operate it, except under the authority of the Minister of Railways and Canals and subject to the obligation of applying for an enabling Act at the next session of Parliament: In re Grand Valley Railway Company (1915), 18 Can. Ry. Cas. 430.

A conditional offer by the owner of land to donate it to a corporation for the purpose of enabling a street to be widened must be accepted during the lifetime of the person making the offer: Montreal v. O'Flaherty (1916), Q.R. 49 S.C. 521, 28 D.L.R. 713 (Que.).

"Sell or otherwise dispose of."—A corporation was authorized by statute to pass by-laws for leasing or selling such portions of a public square as it might not require "for the purpose of a market square or other public purpose." The Public Library Board desired a site for its library building, and, the land being unproductive and not wanted by the corporation, a by-law was passed for conveying a part of the square to the board, and it was held that this was lawfully done; that the board was entitled to a site, and the corporation was bound to furnish it, and that there was nothing wrong in taking the course that was adopted, instead of, as the corporation might have done, selling the land and acquiring another site for the library building: In re McKenzie and Teeswater (1914), 6 O.W.N. 32, 16 D.L.R. 865.

A resolution of a municipal council authorizing the sale of land to a named person for a stated amount, which is entered in the minutes, and they are afterwards signed by the mayor and clerk, is not a sufficient memorandum in writing to satisfy the provisions of the Statute of Frauds: per Howell, C.J.A., in Ponton v. Winnipeg (1908), 17 Man. L.R. 496, 7 W.L.R. 702.

The making by a municipal corporation of a contract for the sale of its land must be authorized by by-law: Ponton v. Winnipeg (1907), 6 W.L.R. 730, (1908) 17 Man. L.R. 496, 7 W.L.R. 702, 41 S.C.R. 18.

The fact that the statutory authority of a municipal corporation was in terms to continue the market theretofore established and to establish and regulate "other markets" does not debar the corporation, in case of the destruction by fire of the market building so continued, from building a new market in another and more fitting location within the municipality to the exclusion of the former site or from using the former site for other purposes: Steeves v. Moncton (1914), 42 N.B. 465, 17 D.L.R. 560, 14 E.L.R. 321.

Where land is vested in a municipal corporation to be used as a public landing, street and square for a court and market, and for no other purpose, the corporation may lawfully erect upon the land public weigh-scales, such structures being necessary or reasonably convenient or useful for the purpose of the market: Fredericton v. York (1898), 1 N.B. Eq. 556.

Where land is conveyed to a municipal corporation, the consideration for it being, as recited in the conveyance, the agreement of the corporation to build and maintain on the land its municipal hall, but the conveyance contains no condition subsequent or resulting trust, and there is nothing to warrant its reformation, the grantor is not entitled, if the building, having been erected and used for the purpose of a municipal hall, is no longer used for that purpose, to get back the land: Powell v. Vancouver (1913), 17 B.C.R. 379, 8 D.L.R. 24, 49 C.L.J. 77, 23 W.L.R. 104, 1 W.W.R. 1022, 3 W.W.R. 108, 161.

Where a municipal corporation owns land upon a statutory trust to lay out and maintain it as a public park or pleasure ground for the enjoyment and recreation of the inhabitants, the corporation cannot convey any of it free from the trust.

Cattle lairs, an agricultural hall for the exhibition of farming implements and products, and an emigrant's home are not within the objects of the trust.

An individual inhabitant cannot sue to restrain a misuse of the park unless specially injured thereby, but the Attorney-General must join.

Anderson v. Victoria (1884), 1 B.C.R. Pt. II. 107.

A municipal council in Alberta may authorize the transfer of the corporation's estate in realty by resolution. A by-law is not essential: In re McEwan and Calgary (1913), 6 A.L.R. 136, 13 D.L.R. 791, 25 W.L.R. 401, 5 W.W.R. 87.

A resolution authorizing the corporation's solicitor to take all "proceedings" and the mayor and clerk to sign all documents necessary to transfer the corporation's estate in land will be given effect to, though part of the "proceedings" is the bringing about of provincial legislation as a condition precedent to a legal transfer: Ib.

A committee of a municipal council cannot, unless authorized by the council, sell corporate property, and, if the committee does so, an action by the corporation lies against the members of it for any loss incurred thereby. Such an illegal sale cannot be ratified by resolution of the council carried by the votes of the members of the committee: New Glasgow v. Brown (1907), 39 S.C.R. 586, reversing (1907), 41 N.S. 542.

The municipal corporation of a city to which a part of a township has been annexed is entitled, under The Public Schools Act, to the school houses and grounds situate within the annexed territory, and may sell and convey them if they are no longer required: In re Hamilton Board of Education and McNichol (1908), 12 O.W.R. 1015.

The purchaser of property which is subject to a mortgage, having several years to run, is not entitled under s. 19 of The Conveyancing and Law of Property Act (R.S.O. c. 109) to deduct from the purchase money the difference between three per cent. and the rate of interest provided for in the mortgage for the whole period for which the mortgage has to run: In re Kingston Light, Heat and Power Company and Kingston (1904), 8 O.L.R. 258.

Where the title to land is vested in a municipal corporation by Act of the legislature, the repeal of the vesting Act will not affect its operation unless it is expressly mentioned so to do: Pictou v. New Glasgow (1915), 48 N.S. 424, 23 D.L.R. 600.

Taking more land than required.

(2) Where in the exercise of its powers of acquiring or expropriating land it appears to the council that it can acquire a larger

quantity of land from any particular owner at a more reasonable price and on terms more advantageous than those upon which it could obtain the part immediately required for its purposes, the council may acquire or expropriate such larger quantity and may afterwards sell and dispose of so much of it as is not so required.

Land to be described in by-law, etc.

(3) A by-law for entering on or expropriating land shall contain a description of the land, and, if it is proposed to expropriate an easement or other right in the nature of an easement, a statement of the nature and extent of the easement to be expropriated. 3-4 Geo. V. c. 43, s. 322.

Sale of land by council, when not to be open to question.

323. The determination of a council as to the time when, the manner in which, the price for which or the person to whom any property of the corporation, which the council may lawfully sell, shall be sold, shall not be open to question, review, or control by any Court, if the purchaser is a person who may lawfully buy, and the council acted in good faith. 3-4 Geo. V. c. 43, s. 323.

This section was passed in consequence of attempts that were made, sometimes successful, to induce the Courts to assume jurisdiction to review and to control the exercise by municipal councils of their discretion as to the matters mentioned in the section. Instances of this are to be found in Phillips v. Belleville (1905), 9 O.L.R. 732, (1906) 11 O.L.R. 256, and Parsons v. London (1911), 2 O.W.N. 1483, 25 O.L.R. 172 (1912) Ib. 442, 1 D.L.R. 756.

In Hubley v. Halifax (1909), 7 E.L.R. 360 (N.S.), the question was as to the right of the defendant corporation to sell land which it had expropriated for "the extension and improvement" of its water system. What was proposed was the sale for the original cost of all the land except a strip reserved where the pipeline was laid, and an injunction restraining until the trial the defendant corporation from carrying out the sale was granted by Meagher, J.

This case is referred to because of the observations of the learned Judge as to the jurisdiction of the Courts to review the action of a municipal council in such matters.

Whether or not the price paid by a municipal corporation for an immovable is justified by the necessity of the case is a matter of pure discretion, and should be left entirely to the Board of Control and the council, unless there is positive proof of conspiracy to defraud the public: Birchenough v. Montreal (1912), Q.R. 21 K.B. 467, 3 D.L.R. 299.

See also notes to s. 10, (Status. and Poniers of Municipal Council).

Power to enter on land after expropriation by-law passed.

324.—(1) At any time after the passing of a by-law for entering on or expropriating land, the corporation, by leave of the Judge and upon payment into the Supreme Court of a sum sufficient, in the opinion of the Judge, to satisfy the compensation, may enter upon the land, and, if any resistance or forcible opposition is made to its so doing, the Judge may issue his warrant to the sheriff of the county or district in which the land lies to put the corporation in possession, and to put down such resistance or opposition which the sheriff, taking with him sufficient assistance, shall accordingly do.

When leave and payment into Court not required.

(2) Leave of the Judge and payment into Court shall not be necessary where the land is being expropriated for or in connection with the opening, widening, altering or diverting a highway unless upon application by the owner a Judge of the Supreme Court otherwise directs. 3-4 Geo. V. c. 43, s. 324.

Owners of lands taken, etc., by corporation, etc., to be compensated.

325.—(1) Where land is expropriated for the purposes of a corporation, or is injuriously affected by the exercise of any of the powers of a corporation or of the council thereof, under the authority of this Act or under the authority of any general or special Act, unless it is otherwise expressly provided by such general or special Act, the corporation shall make due compensation to the owner for the land expropriated, or where it is injuriously affected by the exercise of such powers for the damages necessarily resulting therefrom, beyond any advantage which the owner may derive from any work, for the purposes of, or in connection with which the land is injuriously affected.

Arbitration.

(2) The amount of the compensation, if not mutually agreed upon, shall be determined by arbitration.

Fencing.

(3) Where fencing or additional fencing will become necessary, owing to land having been expropriated, the cost of it shall be included in the compensation.

Damages resulting from severance.

(4) Where part only of the land of an owner is expropriated, there shall be included in the compensation a sum sufficient to

compensate him for any damages directly resulting from severance. 3-4 Geo. V. c. 43, s. 325.

Provision for compensation for injurious affection was first made in The Municipal Act of 1873, 36 Vict. c. 48, s. 373.

All that the early cases decided, as Gwynne, J., pointed out in In re Yeomans and Wellington (1878), 43 U.C.R. 522, 529, was that "An action on the case as for a wrong did not lie against a municipal corporation at the suit of a person injured in his property by an act done within its jurisdiction, and that, however much the proprietor of land abutting upon a highway might be prejudiced by the act of the municipality having jurisdiction over the highway in raising or sinking of the level of the highway, the law, as it then stood, provided no compensation for the injured person, however just it might be that he should receive compensation," but it was held that the change made by s. 373 had the effect of entitling the landowner in such cases to compensation. That decision was affirmed by the Court of Appeal (1879) 4 A.R. 301.

The judgment of the Court was delivered by the Chief Justice (Moss) in an elaborate opinion, in which the cases, English, Canadian and American, are reviewed.

The opinion of the Court was that the corporation had no inherent right to interfere with highways, and that, but for the statute, its officers would be mere trespassers in executing the works which in that case had injuriously affected the land of the claimant. That by its operations in the exercise of that power the claimant's land had been injuriously affected, and that, while the law prevented her from bringing an action against the corporation, it was no longer so unjust as to refuse her compensation.

Corresponding Provisions in Other Provinces.

Alberta.

Towns, Stats. 1911-2, c. 2, s. 228, R.S. 1915, p. 964.
Villages, Stats. 1913, c. 5, s. 63, par. 50, R.S. 1915, p. 1280.
Rural Municipalities, Stats. 1911-2, c. 3, s. 196, par. 10, R.S. 1915, p. 1050.

British Columbia.

Stats. 1914, c. 52, s. 357.

Manitoba.

Rev. Stats. 1913, c. 133, s. 684.

New Brunswick.

Cities only have power to expropriate.

There is in this province no authority conferred by The Municipal Act to expropriate.

Nova Scotia.

Towns Incorporation Act, Rev. Stats. 1900, c. 71, s. 209.
Chapter 76, Rev. Stats. 1900, ss. 5, 6 (as to roads).

QUEBEC.

Expropriations for municipal purposes are provided for by arts. 767 to 802 (inc.) of the new Municipal Code.

SASKATCHEWAN.

Cities, Stats. 1915, c. 16, s. 356.

Towns, Stats. 1916, c. 19, s. 340.

Villages, Stats. 1916, c. 20, s. 163, pars. 1, 11.

Rural Municipalities, Rev. Stats. 1909, c. 87, s. 198, par. 13.

RIGHT TO COMPENSATION WHERE LANDS ARE EXPROPRIATED.

If the legislature authorizes the doing of an act (which, if unauthorized, would be a wrong and a cause of action) no action can be maintained for that act, on the plain ground that no Court can treat that as a wrong which the legislature has authorized, and, consequently, the person who has sustained a loss by the doing of the act is without remedy unless in so far as the legislature has thought it proper to provide for compensation to him. . . . He suffers a private loss for the public benefit: Hammersmith and City Railway Company v. Brand, L.R. (1869) 4 H.L. 196.

In Geddis v. Proprietors of Bann Reservoir, L.R. (1878) 3 A.C. 430, 455-6, it was said by Lord Blackburn, "I take it, without citing cases, that it is now thoroughly well established that no action will lie for doing that which the legislature has authorized, if it be done without negligence, although it occasions damage to anyone."

This principle was reaffirmed in Freemantle v. Annois, L.R. (1902) A.C. 213, 18 T.L.R. 189.

Art. 407 of the Civil Code provides that no one can be compelled to give up his property except for public utility and in consideration of a just indemnity previously paid.

CASES.

ENGLAND.

Land upon which a theatre was situate was expropriated, and a claim for compensation was made by persons who sold refreshments in the theatre, but, the Court having come to the conclusion that they had not an interest in the land, but mere privilege or license, it was held that they were not entitled to compensation: Warr v. London County Council, L.R. (1904), 1 K.B. 713, 73 L.J.K.B. 362, 20 T.L.R. 346.

ONTARIO.

A survey was confirmed by statute which provided that houses built before a named date need not be removed although they encroached upon a highway, but that this should not apply to "any fence, steps, platform, sign porch or projection attached to any dwelling house."

The exception was held not to apply to a verandah of wood, resting on stone pillars, having its own roof and firmly attached to such a house, which was held not to be a porch or projection attached to the house, but an integral part of it.

It was also held that the right to maintain the house in its then position was an interest in land, and that the owner was entitled to claim compensation for its having been injuriously affected by lowering the grade of the highway in front of the house.

Williams v. Cornwall (1900), 32 O.R. 255.

The expense of lowering the pipes of a gas company, the necessity for which is caused by the construction by the corporation of a sewer, is to be borne by the corporation: Toronto v. Consumers' Gas Company (1914), 32 O.L.R. 21, 19 D.L.R. 882, affirmed L.R. (1916) 2 A.C. 618, 37 O.L.R. 586, 30 D.L.R. 590.

The soil occupied by the pipes is land within the meaning of this section, and, as the gas company was, therefore, entitled to be compensated for the damage necessarily resulting from the exercise of the powers of the corporation, the corporation was not entitled to be repaid what it had expended on lowering the pipes. See also Metropolitan Railway Company v. Fowler, L.R. (1893) A.C. 416, 425, 9 T.L.R. 610, followed in Consumers' Gas Company v. Toronto (1897), 27 S.C.R. 453.

Alberta.

A statutory provision empowering municipal councils to pass by-laws to open and maintain temporary roads is permissive and not imperative, and a resolution to that end is sufficient to render the corporation liable to pay compensation for the use of the temporary road: In re Blomfield and Starland (1915), 9 A.L.R. 203, 25 D.L.R. 43, 32 W.L.R. 905, 9 W.W.R. 552.

British Columbia.

Jackson v. North Vancouver (1913), 19 B.C.R. 147, 14 D.L.R. 16, 4 W.W.R. 1208. A landowner is entitled to have the compensation determined by arbitration notwithstanding that his title depends upon an unregistered agreement for the sale of it to him, and he, therefore, under s. 104 of The Land Registry Act, has no estate or interest in this land.

Nova Scotia.

In Rex v. Courtney (1911), 27 D.L.R. 247, which was the case of the expropriation of land upon part of which was a liquor store, Cassels, J., said he was not called upon to deal with the case as if the sole question were: "Is a license of the character of the one in question an interest in real estate for which compensation can be allowed?" and he took as the basis of the compensation the value of the premises to the land owner and the loss of his business.

Quebec.

Where an abattoir is erected under the authority of a by-law which grants the privilege for fifteen years, the council may, nevertheless, pass another by-law absolutely prohibiting abattoirs within the municipality, but, if it does so, and thereby repeals the original by-law, the corporation is bound to compensate the owner of the abattoir for the loss of his vested right to the fifteen years' term under the original by-law: Beaudoin v. De Lorimier (1898), Q.R. 13 S.C. 477.

A municipal corporation, without the ordinary formalities of expropriation, laid water pipes in a strip of the plaintiff's land, removed his fences, and the land was used for the public as part of a street. These acts did not appear to have been authorized by the council, and the intention to expropriate the property was abandoned. Held, that these acts constituted a mere trespass, and were not taking possession of the property so as to make the corporation responsible to the owner for its value: Belair v. Montreal (1899), Q.R. 15 S.C. 494.

"Due compensation."—The principle of compensation is indemnity to the owner, and the basis on which all compensation for lands required or taken should be assessed is their value to the owner as at the date of the notice to treat, and not their value, when taken, to the promoters. The question is not what the persons who take the land will gain by taking it, but what the person from whom it is taken will lose by having it taken from him: Cripps on Compensation, 5th ed., p. 102.

"In treating of that value" (*i.e.*, for the purpose of compensation) "the value under the circumstances to the person who is compelled to sell (because the statute compels him to do so) may be naturally and properly and justly taken into account, and when such phrases as 'damages for loss of business' or 'compensation for the goodwill' taken from the person are used in a loose and general sense, they are not inaccurate for the purpose of giving verbal expression to what everybody understands as a matter of business, but, in strictness, the thing which is to be ascertained is the price to be paid for the land—that land, with all the potentialities of it, with all the actual use of it by the person who holds it, is to be considered by those who have to assess the compensation": per Lord Halsbury, L.C., in Commissioners of Inland Revenue v. Glasgow and South-Western Railway Company, L.R. (1887), 12 A.C. 315, 321, 56 L.J.P.C. 82.

The compensation payable to the owner is the amount which a prudent man, in the position of the owner, would have been willing to give sooner than fail to obtain it: Pastoral Finance Association v. The Minister, L.R. (1914) A.C. 1083.

The special suitability of the land for a business which the owner carried on elsewhere, but intends to transfer to the land, and the savings and additional profits which he will derive from so doing, are elements in assessing the compensation, but the owner is not entitled to have the capitalized value of these savings added to the market value of the land: Ib.

The compensation is the value to the owner, and not the value to the expropriator: In re Harvey and Parkdale (1889), 16 A.R. 468; In re Fitzpatrick and New Liskeard (1909), 13 O.W.R. 806, 7.

The arbitrator has power to include in his award compensation for injury to the land during the progress of the work by interference with the means of access to it, and also the cost of work done to afford such access: In re Burnett and Durham (1899), 31 O.R. 262.

Due compensation simply means a full indemnity in respect of all the pecuniary loss suffered, and the only subjects of such loss are: (1) The land actually taken, and (2) the injury to what is left: In re Macdonald and Toronto (1912), 27 O.L.R. 179, 8 D.L.R. 303.

Where land is taken for the purpose of widening a highway, the landowner is not entitled to have taken into consideration, in determining the compensation, the fact that a street railway line will be brought nearer to his residence, and to receive additional compensation because of the consequent injury to his land: Ib.

Nor is the fact that the cost of the street widening is borne by the landowners benefitted by the work under the local improvement plan an element of damage to be considered by the arbitrators: Ib. [Followed as to this in Okell v. Victoria (1914), 19 B.C.R. 121, 16 D.L.R. 353, 27 W.L.R. 403, 6 W.W.R. 354. The same conclusion was reached by the Manitoba Court of Appeal in In re McNichol and Winnipeg (1912), 22 Man. L.R. 305, 4 D.L.R. 379, 21 W.L.R. 351, 2 W.W.R. 470.]

Nor is depreciation caused by the change of the general character of the street an element to be considered: Ib.

SPECIAL VALUE.

Where property expropriated is, owing to its location and adaptability for business, worth more to the owner than its intrinsic value, he is not entitled to have a capital amount representing the excess added to the market value of the property. His proper compensation is the amount which a prudent man, in the position of the owner, would be willing to pay: Lake Erie and Northern Railway Company v. Schooley (1916), 53 S.C.R. 416, 30 D.L.R. 289, reversing (1915) 34 O.L.R. 328, 25 D.L.R. 537.

The added worth to the owner for the actual and particular use to which the land is put and for which it is specially fit is spoken of by Hodgins, J.A., as its "special value": In re Schooley and Lake Erie and Northern Railway Company (1915), 34 O.L.R. 328, 333, 25 D.L.R. 537.

In In re Logan and Toronto (1916), 10 O.W.N. 319, which was a case of compensation for the re-arrangement of the buildings of a brick manufacturer necessitated by the expropriation of part of his land.

In assessing compensation for real property expropriated by the Crown, primarily only such damages may be allowed as are referable to the land itself, and not such as purely and simply affect the person or business of the owner, but where the whole of the owner's property upon which he has been carrying on business is taken and the property has a special value for the purposes of his business, then its special value as a business site becomes an element in the market value of the land, and must be considered in assessing the value: Rex v. Richards (1912), 14 Ex. C.R. 365 (N.B.).

Where the land expropriated has not been entered upon or used by the corporation, the compensation should be based on the value of the land at the date of the award, and not that of the by-law: In re Byerley and Winnipeg (1911), 20 Man. L.R. 438, 17 W.L.R. 192.

In assessing compensation for the expropriation of land taken for the enlargement of a street, it is the value of the land at the time that the assessment roll is made up that is to be considered, and not its value at the time of the expropriation: Belanger v. Montreal (1898), Q.R. 15 S.C. 43.

In expropriating vacant land, a separate indemnity cannot be granted for the fence surrounding it nor the trees within it. It is the value of the land including these accessories that the landowner is entitled to, and he cannot have, in addition to that, indemnity for the fence or the trees or have the land without the fence and trees and the fence and trees valued and allowed for separately: Montreal v. Baxter (1898), Q.R. 15 S.C. 149.

When land subject to restrictions as to its use is expropriated, the amount of compensation to the person interested in it is to be assessed with reference to the value of his interest, and not to its value to the persons taking it. Where, therefore, a churchyard in which burials were prohibited by order-in-council was expropriated, it was held that the rector of the parish was entitled to compensation only for the loss that he had sustained by being deprived of his interest in the churchyard, and not according to the value which the land would be to the expropriating body after it had been acquired: Stebbing v. Metropolitan Board of Works, L.R. (1870), 6 Q.B. 37, 40 L.J.Q.B. 1, 23 L.T. 530.

Referring to this case, it is said in Cripps on Compensation, 5th ed., p. 103, "It is scarcely probable that an instance would again occur in which the sterilisation is so permanently attached to ownership as to deprive the owner of all claim to compensation."

The Government of Queensland granted land to the trustees of the Acclimatisation Society of Queensland, to be used only for the purposes of the society, and with a provision that the Government might resume possession, paying "the value of the land." The trustees had power by statute to sell the land, but only to the local authority or to a certain agricultural association, the proceeds to be invested and the income applied to the purposes of the society, and it was held that, upon resumption of the land by the Government, the trustees were not entitled to be paid the unrestricted freehold value of the land, but, in accordance with the ordinary rule as to compensation, the value of the land to the trustees under the condition upon which they held it: Corrie v. MacDermott, L.R. (1914), A.C. 1056.

In this case Stebbing v. Metropolitan Board of Works (supra) was referred to, and it was said that "strictly the rector was entitled to have valued his chance of ever getting the land in his hands in such a condition as could bring pecuniary value, but the valuation under the circumstances might well be nil": p. 1064.

SPECIAL ADAPTABILITY.

An owner is entitled to have the price of his land fixed in reference to the probable use which will give him the best return, and the term, "special adaptability," only denotes that the probable use from which the best return may be expected is special in its character: Cripps on Compensation, 5th ed., p. 117.

The same principle applies where the land of the claimant, though not in itself adaptable for the use, *e.g.*, for use as a reservoir, is so adaptable in conjunction with other adjacent lands belonging to other owners: Ib., p. 118, citing In re Tynemouth Corporation and Duke of Northumberland (1903), 89 L.T. 557, 67 J.P. 425, 19 T.L.R. 630. In that case it was held that the arbitrator rightly took into consideration, as enhancing the value of the land expropriated for the purpose of a reservoir, its natural character and position as rendering its combination with lands belonging to other persons, for the purpose of forming a reservoir, a reasonable probability.

It appears from the report of the case that the property of the other persons was also being expropriated for the same purpose.

The fact that the land taken has a special adaptability for a particular use is an element of value to be taken into consideration in determining the compensation, although the land could not be utilized for that purpose unless statutory powers for its compulsory purchase were first obtained.

In determining the value arising from such special adaptability, regard to the contingent value arising from the possibility of the land coming into the market for the particular purpose, and not to the value of the realized possibility arising from the fact of the expropriating body having obtained statutory powers which enabled it to use the land for that purpose: In re Lucas v. Chesterfield Gas and Water Board L.R. (1909), 1 K.B. 16, 24 T.L.R. 858.

Any special adaptability which property may have for some use or purpose is to be treated as an element of market value: Sidney v. North-Eastern Railway Company, L.R. (1914), 3 K.B. 629, Raymond v. Rex (1916), 16 Ex.C.R. 1, 29 D.L.R. 574, Rex v. Hearn (1916), 16 Ex.C.R. 146.

In Metropolitan Water Board v. Assessment Committee of Chertsey Union, L.R. (1916), A.C. 337, 362-3, 32 T.L.R. 168, Lord Parker, referring to what was said in the Court below, said, "If this only means that, in valuing a hereditament, you must take into account its position and its fitness or adaptability for all purposes for which it can be used, including that for which it is used, it is obviously correct." See also the observations of Lord Atkinson at p. 350.

In ascertaining the amount of compensation, the actual use of the property and its potentialities to the owner must be taken into account: In re

Humphreys and Victoria (1911), 17 B.C.R. 258, 19 W.L.R. 615, 1 W.W.R. 227 (B.C.), reversed (1912) 17 B.C.R. 258, 5 D.L.R. 294, 21 W.L.R. 555, 2 W.W.R. 566, because the arbitrators had allowed interest on the sum awarded for injurious affection and a higher rate than five per cent. on that sum and on the sum awarded for the land taken, the view of the Court being that, although the landowner consented to abandon the first mentioned of these sums and the interest in excess of five per cent., there was no power to alter or amend the award.

In Rex v. Moncton Land Company (1912), 13 Ex. C.R. 521, it was held that, in assessing compensation for lands taken for the purposes of a public work, *primâ facie*, the market price governs, but the "prospective capabilities" of the property must be taken into account, and that usually they form an element in fixing the market price.

The arbitrators, in determining the compensation for a strip of land taken to widen a highway, may properly take into consideration: (1) The damage suffered by the owner in being precluded from erecting commercial buildings on the expropriated strip; (2) that, although the property had been declared by by-law residential and the erection of buildings within a specified distance from the street line was prohibited, the by-law might be repealed, and the land become suitable for commercial buildings: In re Gibson and Toronto (1913), 28 O.L.R. 20, 11 D.L.R. 529.

In this case, In re City and South London Railway Company and St. Mary Woolnoth, L.R. (1903) 2 K.B. 728, 19 T.L.R. 363, 72 L.J.K.B. 936, L.R. (1905) A.C. 1, 21 T.L.R. 127; In re Lucas and Chesterfield Gas and Water Board, L.R. (1909) 1 K.B. 16, 24 T.L.R. 858; Cunard v. Rex (1910), 43 S.C.R. 88; and In re South Twelfth Street (1907) 217 Pa. St. 362, were specially referred to.

Where islands situated in rapids and rights, including water rights over a promontory at the foot of the rapids, are expropriated by a company empowered to develop water powers and to expropriate lands required for that development, in assessing the compensation payable it is not proper to treat the value to the owners of the lands and rights as a proportional part of the value of the undertaking which the company was proposing to carry out. The proper basis for compensation is the amount for which the expropriated property could have been sold had the company, with its acquired powers, not been in existence, but with the possibility that that company or some other company or person might obtain those powers: Cedar Rapids Manufacturing and Power Company v. Lacoste, L.R. (1914) A.C. 569, 30 T.L.R. 293, 16 D.L.R. 168.

In Rex v. Trudel (1914), 49 S.C.R. 501, 19 D.L.R. 270, it was held that the prospective potentialities of the land should be taken into account in determining the compensation to be paid for land which is expropriated, but it is only the existing value of such advantages at the date of the expropriation that falls to be determined.

In assessing the compensation to the owner of upland property, with riparian rights incident to it, which has been expropriated, the possibility of obtaining a license to use the foreshore is to be taken into account: per Anglin, J., in Tweedie v. Rex (1915), 52 S.C.R. 197, 221, 27 D.L.R. 53.

What is called by some its "potential value," but generally its "special adaptability", is spoken of by Hodgins, J.A., in In re Schooley and Lake Erie and Northern Railway Company (1915), 34 O.L.R. 328, 333, 25 D.L.R. 537, as "special or exceptional adaptability," referring to "an apparent but future use to which the property may be but is not now put and for which it is particularly adapted."

See also In re Ontario and Minnesota Power Company and Fort Frances (1916), 35 O.L.R. 459, 467, 28 D.L.R. 30.

There is some conflict of judicial opinion as to whether the hope or expectation of obtaining the approval of a third person, whose action the landowner has no right or power to control, which, if obtained, would enhance the value of the expropriated property, is an element in fixing the compensation.

In Rex v. Wilson (1914), 15 Ex. C.R. 283, 22 D.L.R. 585, Cassels, J., expressed the opinion that it was not, and referred to many cases in support of his view, and, among them, to Central Pacific Railroad Company of California v. Pearson (1868), 35 Cal. 247, which was the case of the owner of land having riparian rights on the Sacramento River and a suitable site for wharf purposes, and his claim was that compensation should be allowed on the basis that a wharf franchise might be given to the owner of the land. Dealing with this contention, the Court said (p. 262), "The testimony in relation to the value of wharf privileges on the shore of the Sacramento River, where the tide ebbs and flows, given for the purpose of enhancing the value of some of the land sought to be appropriated, was also improperly received, for the obvious reason that the party claiming the compensation had no wharf franchise. The mere fact that the party might at some future time obtain from the State a grant of a wharf franchise, if allowed to remain the owner of the land, is altogether too remote and speculative to be taken into consideration. The question for the commissioners to ascertain and settle was the present value of the land in its then condition, and not what it would be worth if something more should be annexed to it at some future time": pp. 291, 2.

The case of Lynch v. City of Glasgow (1903), 5 Court of Sess. Cas. 1174, is also referred to (pp. 289-290), and the language of the Lord President, in giving judgment, at page 1180, is quoted as follows: "I think that the Lord Ordinary is correct in saying that there is no reported case, since the Act of 1845 was passed, in which the chance of a tenant, or his successor, obtaining a renewal of his lease, after its natural expiry, has been taken into account in assessing compensation, although the case must have occurred very frequently, and, if this be so, the present case involves a new departure of great importance and of far-reaching consequences. It appears to me that such a claim could only prevail if it was established that the chance or hope of obtaining a renewal of a lease, after its expiry, is an 'interest in the lands,' in the sense of the statutes, and I am unable to find any warrant either in the statutes or in the decisions for adopting this view. A lease during its currency has some of the attributes of a real right or interest in lands, but the chance of its being renewed by the personal volition of the lessor does not seem to me to be in any reasonable sense an interest in land, for the purposes of such a question as the present."

The language of Lord McLaren is also quoted (p. 290):—

"And I am satisfied that there is no judicial authority in support of the present claim—no authority for holding that it is an element, in awarding compensation to a tenant, that he may possibly have his lease renewed. . . . In the present case, I agree that the language of the section is broad enough to cover a claim of expectancy, but then it must be an expectation founded on legal right. . . . Now, in the present case the contingency which the arbiter proposes to value is the chance that, at the termination of the lease, two persons, who are free to renew their relation and are equally free to decline to renew it, might agree to enter into a new relation for the same or a different term of years. That is not a contingency founded on any right, for it is admitted that there is no obligation to renew the lease, and, therefore, I am of opinion that the chance of renewal is not an element which can be taken into account in valuing the tenant's interest in terms of the statute."

The same view is entertained by Audette, J., and was given effect to by him in Rex v. Canadian Pacific Lumber Company (1915), 15 Ex. C.R. 350, 26 D.L.R. 80, and he there said (p. 356): "It must be held that the right to that approval provided by the statute (*i.e.*, the erection of wharves and booms in navigable waters on which the suppliant's land abutted) is too remote and speculative to form a legal element for compensation."

No reference was made by Cassels, J., to City and South London Railway Company v. St. Mary Woolnoth (supra), which seems directly opposed to his view. It was the case of church lands, and it was held that the arbitrator was entitled to award compensation upon the basis that the site of the church might, by a scheme under the Union of Benefices Act, 1860, or otherwise, at some future time cease to be the site of the church and become available for building.

As the learned Judge points out, it was assumed in Cunard v. Rex (1910), 43 S.C.R. 88, 8 E.L.R. 94, that the hope or expectation that a riparian owner of a water lot in a public harbour might obtain authority from the Crown to erect structures on the lot formed an element in fixing the compensation. and the opinion expressed by Anglin, J., in Tweedie v. Rex (supra) and the decision in In re Tynemouth Corporation and the Duke of Northumberland (supra) are also opposed to his view.

On principle there would appear to be no reason why the landowner should not have the benefit of any added value given to his land on account of its special adaptability for a particular purpose if combined with another contiguous property. That potentiality would, in all probability, add to the market value of the land expropriated, the extent of the addition, of course, depending on the probability of its being possible to effect the combination. In many cases the probability would be so small that nothing should be added, but in some cases to deny the right would work grave injustice. It is well known that the practice of the Crown in Ontario is to give to the owners of land abutting on navigable waters the right of pre-emption of the water lot in front of it, and, though this is not founded on any legal right, it would seem that it would be a grave injustice to such a landowner if the potentialities of his land in combination with the water lot were not to form an element in determining the compensation he is to be entitled to receive.

In assessing the price to be paid for land compulsorily acquired the value to be ascertained is the value of the property to the seller in its actual condition at the time of expropriation with all its existing advantages and possibilities, excluding any advantage due to the carrying out of the scheme for which it is compulsorily acquired, the question of what is the scheme being a question of fact for the arbitrator: Fraser v. Fraserville (1917), 33 T.L.R. 179. See also Secord v. Edmonton (1916), 32 D.L.R. 698 (Alta).

Other Cases in which Claims on Account of Special Adaptability were Allowed.

In fixing the compensation, it is proper to regard the effect upon the value of an unrealized possibility, such as that a spring would within a reasonable time probably be sought as a source of water supply by a neighbouring town or village: In re Fitzpatrick and New Liskeard (1909), 13 O.W.R. 806-7.

In re Tynemouth Corporation and Duke of Northumberland (supra).

Cases in which Claims on Account of Special Adaptability were Disallowed.

A claim for compensation for special adaptability of property expropriated for harbour purposes was disallowed because there was no evidence to show that there was any competition of purchasers for the purpose for which the land had been taken by the Crown, or that there was any possibility of the landowner obtaining a purchaser who would use the land for that purpose: Rex v. Inverness Railway and Coal Company (1909), 12 Ex. C.R. 383, 7 E.L.R. 291.

Lands which fronted on a public harbour owned by the Crown were expropriated for the purpose of forming the shore end of a wharf extending out into the harbour. The landowner had no grant and claimed no title to the beach or to the land covered with water at medium high tide, but claimed that, in assessing compensation, the special adaptability of the lands for wharf purposes should be considered as adding a very large value to them, but it was held that, as the landowner did not own the land covered by water nor the beach, the special adaptability claimed was not to be considered: Gillespie v. Rex (1909), 12 Ex. C.R. 406, 7 E.L.R. 299, affirmed by the Supreme Court (unreported).

Where water lots, which could have been made more valuable by the erection of wharves and piers, for which it would be necessary to obtain a license, are expropriated, the owner is not entitled to compensation based on the enhanced value that would be given to the lots by the erection of the wharves and piers and the expectation that a license would be granted for their erection, where the obtaining of the license is practically impossible, except perhaps to the extent of adding a nominal sum: Cunard v. Rex (1910), 43 S.C.R. 88, 8 E.L.R. 94, affirming (1909) 12 Ex. C.R. 414.

Where water side property is expropriated before the owner has asked for or obtained statutory permission to build wharves or other erections upon the *solum* below low-water mark in the absence of evidence to shew that the possibility of obtaining such permission had increased the value of the property in the market, such possibility ought not to be taken into consideration in assessing the compensation: Raymond v. Rex (1916), 16 Ex. C.R. 1, 29 D.L.R. 574.

MARKET VALUE.

In the Canadian cases it is again and again stated that the market value or market price of the land expropriated is the basis upon which compensation to the landowner is to be assessed, and what is spoken of sometimes as its "special adaptability' and sometimes its "potentialities" is treated as but an element entering into the fixing of its market price.

In Browne and Allan on Compensation, 2nd ed., 97, it is said that:—"The fundamental principle in assessing compensation is to discover what the person will lose by having his land or his interest in it taken from him. It is the value of the land to the owner that is the subject of compensation, not merely its market value, nor its value to the promoters taking it, but its value to him. His interest may be subject to restrictions which lessen that value or it may be held together with rights which are beneficial or other advantages which enhance the value to him. It is the value of the land, with all its potentialities and with all the actual use of it by the person who holds it, that is to be considered in assessing the compensation."

Care must be taken not to overlook the fact that, where land is used for a special purpose by the owner, there must be added to its market price a reasonable allowance measured by that use, or, at all events, the value of it to the owner and the damage done to his business carried on there consequent on his being turned out of possession: Dodge v. Rex (1906), 38 S.C.R. 419, 155.

"The market price of lands taken ought to be the *primâ facie* basis of valuation in awarding compensation for land expropriated. The compensation, for land used for a special purpose by the owner, must usually have added to the usual market price of such land a reasonable allowance measured by possibly the value of such use, and, at all events, the value thereof to the using owner, and the damage done to his business carried on therein, or thereon, by reason of his being turned out of possession": Dodge v. Rex (1906), 38 S.C.R. 149, 155.

See also Rex v. Condon (1909), 12 Ex. C.R. 275, 279; Rex v. Hayes (1909), 12 Ex. C.R. 395; Rex v. Murphy (1909), 12 Ex. C.R. 401; Brown v. Rex (1909), 12 Ex. C.R. 463; Rex v. Moncton Land Company (1912), 13 Ex. C.R. 521; Rex v. Richards (1912), 14 Ex. C.R. 365; National Trust Company v. Canadian Pacific Railway Company (1913), 29 O.L.R. 462, 15 D.L.R. 320; Rex v. Macpherson (1914), 15 Ex. C.R. 215, 20 D.L.R. 988; Rex v. Manuel (1915), 15 Ex. C.R. 381, 25 D.L.R. 626.

Where a highway is widened and lands required for the widening are expropriated, the landowner is entitled to the market value of his land and to the cost and loss which the removal of a building upon the land expropriated inwards from the widened highway will entail: In re Brown and Ottawa (1916), 10 O.W.N. 403.

Where land is taken for the purpose of using the gravel on it, the owner is entitled to compensation for the land taken only as farm land where there is no market for the gravel: Vezina v. Reg. (1889), 17 S.C.R. 1.

In Demers v. Rex (1915), 15 Ex. C.R. 492, that case was distinguished, and it was held that where land is taken for a gravel pit for a government railway, the price paid for the land three years after the expropriation of the right of way, where the land had been enhanced in value by the operation of the railway, was the "best test and starting point" for determining the market value of the land.

In Brown v. Rex (1909), 12 Ex. C.R. 463, a claim was made by the landowner for the flooding of his hay lands by a dam constructed by the Crown.

Proceedings for the expropriation of the land were taken by the Crown while the other proceedings were pending, and it was arranged between the parties that the evidence adduced under the petition of right should be treated as if also adduced in the expropriation proceedings.

The landowner claimed damages for the loss of hay up to the time of trial.

It was held that he was not entitled to damages for the loss of the hay; that, in assessing compensation, the whole of the property should be considered as comprising 2,080 acres suitable for ranching purposes, and the market value (an element of which was its potential value), together with that of the house and barn on it, ascertained as at the date of the expropriation, then, ascertaining the market value of what was left and deducting that from the value of the part expropriated, the difference would represent the owner's loss.

Compensation for the expropriation of a wood lot is to be arrived at by seeking the market value of it as a whole as it stood at the date of the expropriation, and not by calculating the profits that might be realized out of the sale of the timber on the land: Rex v. Woodlock (1915), 15 Ex. C.R. 429, 32 D.L.R. 664.

Where there is a lake on the property suitable for watering cattle and other general purposes, that will be taken into consideration as an additional element of value in respect of its use for agricultural purposes: Ib.

Special adaptability for railway purposes is nothing more than an element to be considered in determining the market value of the property: Rex v. Roy (1916), 15 Ex. C.R. 472, 33 D.L.R. 52.

The market value of property may be enhanced by the statutory right of the owner of a water lot to continue to use and enjoy his property and mooring rights as he did when the statute was passed until . . . and it was held to have been increased in the particular case: Rex v. Power (1916), 16 Ex. C.R. 104.

INTRINSIC VALUE.

By s. 818 of the charter of the City of Winnipeg it is provided that, in fixing the compensation where a part of the property only is expropriated, the arbitrators are to determine: (1) The intrinsic value of the part of the property taken; (2) the increased value (if any) of the residue of the property caused by the proposed improvement; and (3) the damage or depreciation that may be caused to such residue by reason of the expropriation of a part of it, and that the difference between 1 and 2 or 1 and 3, added together, shall constitute the price or compensation to be paid to the property owner, and it is further provided that, when the arbitrators determine and award that the increased value is equivalent to or in excess of the intrinsic value of "the part of the property and premises required," they are not to award any price or compensation for the part so required or liable to expropriation.

This section was considered and applied in In re McNichol and Winnipeg (1912), 22 Man. L.R. 305, 4 D.L.R. 305, 21 W.L.R. 351, 2 W.W.R. 470, and in In re Winnipeg and Battaglia (1914), 7 W.W.R. 206 (Man.), and in the former case Cameron, J.A., referred to the difference between s. 818 and The Ontario Act.

In In re Winnipeg and Battaglia (supra), it was said that "intrinsic value" means the ordinary or normal as distinguished from the speculative value.

In Rex v. Manuel (1915), 15 Ex. C.R. 381, 25 D.L.R. 626, which was the case of the expropriation of a gentleman's residence, it was held by Audette, J.:—

(1) That the owner was entitled to have the compensation assessed at its market value in respect of the best uses to which it could be put, *e.g.*, where a property has its chief value as a gentleman's residence, commanding

a good view and with a fairly desirable location, that is the value upon which the compensation should be assessed.

(2) That the compensation for property taken under the authority of The Expropriation Act, R.S.C. c. 143, is to be assessed upon the market value of the property, and not upon its intrinsic value.

"Intrinsic value," he said (p. 384), "is the value which does not depend upon any exterior or surrounding circumstances. It is the value embodied in the thing itself. It is the value attaching to objects or things independently of any connection with anything else," and he illustrated his meaning by referring to the case of a discarded shipyard and the case of wharves and piers built for the square timber trade, now no longer in existence, and said that these may perhaps be of great intrinsic value, but, if the property were thrown on the market, would have very little commercial or market value.

This was again stated by the same learned Judge in Rex v. The Carslake Hotel Company (1915), 16 Ex. C.R. 24, and he also held that an appraisal of a building by the quantity survey method while it may disclose the intrinsic value of the property does not necessarily establish its market value.

GOODWILL.

The probable diminution in the value of the claimant's goodwill in his trade consequent on the taking of the premises in which the trade is carried on is also to be taken into consideration.

Goodwill is the probability of the continuance of a business connection and its value is fixed at a certain number of years' purchase, according to the nature of the particular trade or business. When lands are taken under compulsory powers, the goodwill is not purchased by the promoters, but remains the property of the trader, and the loss he suffers is the diminution in its value in consequence of his compulsory ejectment from the premises he is occupying. There are many cases in which the diminution in its value is hardly appreciable, although the trade premises have compulsorily been taken. In other cases the diminution in the value of a goodwill may practically equal the entire value of the goodwill. This is the case where a business is retail and local, depending on neighbouring customers, and no suitable premises can be found in the locality within which the business connection extends.

The goodwill of trade premises which depends on the personal skill of the owner does not pass to the mortgagee of the trade premises, and the owner is in such a case entitled to compensation for the probable diminution in its value consequent upon the expropriation of the premises: Cripps on Compensation, 5th ed., pp. 107, 8.

Where lands upon which the owner is carrying on trade are expropriated or injured, damages to the goodwill, in addition to the damages to the property, are a proper subject for compensation: In re McCaulay and Toronto (1889), 18 O.R. 416.

Where the profits of a business carried on upon land which is expropriated depended not only on the specially suitable location, environment and equipment, but also on the application to it of the personal exertions and talents of the proprietor, and, were, therefore, subject to the contingencies of death, failing health, bankruptcy, or the falling away of business, the damages are not properly arrived at by capitalizing the profits and adding an allowance for the possible enlargement of the business by the use of further portions of the owner's land.

Profits that are being earned are an element to be considered in determining the value of land and as demonstrating the uses to which it may reasonably and advantageously be put, and as giving it unique or special value.

There is no practical difference between the destruction of the goodwill of a business carried on in a particular property where there is no similar place to which the owner can go and the destruction of the goodwill when the owner can move elsewhere. In both cases the goodwill attached to or affecting the value of the property is wholly gone, and whatever goodwill is thereafter acquired is new and is attributable to a different property.

In arriving at the amount of profits, salaries for the owners of the business, a fair rental and an allowance for depreciation are properly chargeable against the business:

An allowance of three years' profits for the termination of the business was, in the circumstances, sufficient, the value of the land and buildings having been based really on the amount of the annual profit.

In re Meyer and Toronto (1914), 30 O.L.R. 426, 19 D.L.R. 785.

See also Rex v. Courtney (1916), 27 D.L.R. 247 (supra).

REINSTATEMENT.

There are some cases in which the income derived or probably to be derived from land would not constitute a fair basis in assessing the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all cases to which the principle of reinstatement is applicable. But we may instance churches, schools, hospitals, houses of an exceptional character, and business premises in which the business can only be carried on under special conditions or by means of special licenses. In a case heard at Edinburgh it was sought to extend the principle of reinstatement to a case in which a portion of a public garden had been taken, but such a contention was rightly set aside by the arbitrator (Lord Shand): Cripps on Compensation, 5th ed., pp. 118-9.

The principle of reinstatement, which means assessing the amount of the compensation according to the cost of acquiring an equally convenient site and erecting equally convenient premises, applies when land is used for a particular purpose, such as for a public park or for a church or for a school: Halsbury's Laws of England, vol. 6, par. 39.

See In re Brantford Golf and Country Club and Lake Erie and Northern Railway Company (1914), 32 O.L.R. 141, 144, 5 (1916), 32 D.L.R. 219, which was the case of the expropriation of the land of a golf club.

The doctrine of reinstatement does not apply to the ordinary cases of expropriation of lands consisting merely of isolated dwellings and the lands upon which they are situate: Rex v. Wilson (1914), 15 Ex. C.R. 283, 294.

The principle of reinstatement was held not to be applicable to the case of a mill which had not been in operation for ten or eleven years before the expropriation, but the landowner was allowed compensation based upon the market value, taking into account its potential capabilities for industrial purposes: Rex v. Peters (1915), 15 Ex. C.R. 462, 32 D.L.R. 692.

See also In re Brown and Ottawa (1916), 10 O.W.N. 403, noted under "market value."

BUILDINGS AND ERECTIONS.

In Rex v. McDonald (1908), 5 E.L.R. 431, a barn, resting on the ground on boards placed on the top of some boulders, was treated and allowed for as part of the land expropriated.

These words in a lease do not include the filling in and piling of land covered with water in order to convert it into dry land and prepare it for building upon: Adamson v. Rogers (1895), 22 A.R. 415, (1896) 26 S.C.R. 159.

In Sleeth v. St. John and Gordon v. St. John (1908), 39 N.B. 56, 5 E.L.R. 391, (1909) 6 E.L.R. 129, that case was distinguished, and it was held that the lessees were entitled to be allowed for such piling and earth filling as formed part of the foundation of the buildings they had erected.

These words include fixtures and machinery which would have been fixtures but for the right of the tenant to remove them: In re Brantford Electric and Power Company and Draper (1896), 28 O.R. 40, (1897) 24 A.R. 301.

But see Long Eaton, etc., v. Midland Railway Company, L.R. (1902) 2 K.B. 574, 18 T.L.R. 743, in which it was held that a railway embankment was a building within the meaning of a restrictive covenant designed to prevent the land from being used for any other purpose than for the erection of private buildings.

See also Waite's Executors v. Inland Revenue Commissioners, L.R. (1914), 3 K.B. 196, 30 T.L.R. 568, and Morrison v. Inland Revenue Commissioners, L.R. (1915), 1 K.B. 716, 31 T.L.R. 176.

LOSS ARISING FROM USER OF AUTHORIZED WORKS.

"An owner is not entitled to compensation for loss arising from the user of authorized works, but only for loss caused by their construction. The principle is, that promoters are not bound to pay compensation for damage necessarily resulting from the use of their works for the purposes authorized by the legislature": Cripps on Compensation, 5th ed., p. 147.

Land taken under powers of expropriation and applied to any use authorized by the statute cannot by its mere use, as distinguished from the construction of works upon it, give rise to a claim for compensation, but where part of an owner's land is taken from him and the future use of the part taken may damage the remainder of his land, such damage may be an injurious affecting of his other lands, although it would not be injurious affecting of the land of neighbouring proprietors from whom nothing had been taken for the purpose of the intended works: Cowper Essex v. Acton, L.R. (1889), 14 A.C. 153, 161, 58 L.J.Q.B. 594, 5 T.L.R. 395.

In the same case it was said by the Lord Chancellor (Halsbury): "That if works are not carefully and properly conducted, they could be restrained by injunction as often as any annoyance arose to the neighbourhood from the improper mode of conducting them," is not an answer to a claim for compensation for "liability to occasional and exceptional annoyances, is a real injury to property and not fanciful or imaginary": p. 160 of the report in 14 A.C.

REVERSIONARY INTERESTS.

The present value of his land to the owner of a reversionary interest, who is receiving no present benefit, can be calculated by one of the following methods:—

Take the case of an owner entitled to a property of the annual value of £100 on the expiration of a term of twenty years. On the 4 per cent. table he would be entitled to £2,500 at the end of twenty years as the then value of an annuity of £100 in perpetuity. The present value of £2,500 deferred for twenty years on the four per cent. table is £1,141.

The same result would be arrived at by subtracting from the £2,500 the present value of an annuity of £100 payable for twenty years. Taking again the 4 per cent. table, the present value of the annuity is £1,359, which, being deducted from the £2,500, leaves £1,141.

See Cripps on Compensation, 5th ed., pp. 110, 111.

COMPENSATION TO A LESSEE OR TENANT.

The compensation payable to a lessee or tenant depends on the difference between the actual rental paid by him and the improved annual rental that the property is worth: Cripps on Compensation, 5th ed., p. 109.

A mere expectancy, however reasonable, of a renewal of lease has been held not to constitute an interest in land: Lynch v. Glasgow Corporation

(1904), 5 F. 1174 (Court of Session S. Cas.); Rex v. Liverpool, etc., Railway Company (1835), 4 A. & E. 650, 43 R.R. 454, 111 E.R. 931.

A lessee of expropriated land has a recourse against the expropriator for indemnity independently of the proprietor: Verdun v. Grand Trunk Ry. Co. (1898), Q.R. 7 Q.B. 185.

Lessees under a renewable lease, which gives the lessors an option of renewing or paying for improvements, or their assigns who remain in possession after the expiration of the term, but to whom no renewal lease is granted, although demanded, are occupants as tenants at will merely, and are not "persons interested" in the land within the meaning of The Railway Act, R.S.C. c. 37, s. 155, and are, therefore, not entitled to compensation for the expropriation of any part of the land demised: Canadian Pacific Railway Company v. Alexander Brown Milling and Elevator Company (1908-9), 18 O.L.R. 85, (1910) 42 S.C.R. 600.

It is open to question whether in view of the interpretation of the word "owner" by s. 321, cl. (c), this decision is applicable to a case arising under this section.

In re Perram and Hanover (1916), 36 O.L.R. 582, 31 D.L.R. 142, which was the case of compensation where a factory and water power leased from the corporation were expropriated by the corporation, and it was held that the lessee was entitled to be compensated for the value of the unexpired term and a reasonable sum for the expense of removing his business to other premises, and that there could not be set off against this the loss he would sustain if he continued to use the premises for the business he was carrying on there.

As to the method of assessing compensation where there are claims by the owner, tenant and subtenant of land expropriated, see In re O'Neill and Toronto (1916), 37 O.L.R. 446, 32 D.L.R. 775.

Expenses of removal.

If the owner is in occupation of premises, compensation for damages, incurred through the necessity of removal, are to be allowed. These include the cost of the removal of furniture and goods and the consequent depreciation in the value of furniture which has been specially fitted, but which is not a fixture attached to the freehold, and if the claimant is a trader, his damages will also include any diminution in the value of his stock consequent on its removal, or, in the alternative, on a forced sale if that is shown to be the only practicable course: Cripps on Compensation, 5th ed., pp. 106, 7.

Expenses incurred in obtaining other premises.

Where the claimant incurs a liability to an increased rental or other reasonable expenses in taking equally convenient new premises for the purpose of carrying on his business, the increased rental and other expenses should be taken into account in assessing the compensation, and this principle applies though the business is not being carried on at a profit: Cripps on Compensation, 5th ed., p. 107.

INTEREST.

The owner of land which has been expropriated is entitled to interest on the amount of the compensation from the date of the passing of the expropriating by-law: In re Usher and North Toronto (1911), 2 O.W.N. 851, following In re Leak and Toronto (1898), 29 O.R. 685, (1899) 26 A.R. 351 (1900) 30 S.C.R. 321.

Where the compensation awarded to the owner for land expropriated has been increased on an appeal from the award, interest is payable on the amount of the increase from the date on which the corporation took possession: Grand Trunk Railway Company v. Montreal (1900) Q.R. 18 S.C. 534.

Where there has been no interference with the possession of the landowner and there is no provision in the by-law for entry upon his land, interest should not be allowed on the amount awarded: In re Hislop and Stratford (1915), 34 O.L.R. 97, 23 D.L.R. 753.

Compensation for the injurious affection of lands in the exercise of municipal power is in the nature of damages, and interest should not be allowed on it before the liquidation of the damages by making an award: In re Leak and Toronto (1899), 26 A.R. 351, (1900) 30 S.C.R. 321, reversing (1898) 29 O.R. 685.

In re Leak and Toronto (1899), 26 A.R. 351, as to interest on the compensation for injurious affection, was followed in In re Humphreys and Victoria (1911), 17 B.C.R. 258, 5 D.L.R. 294, 19 W.L.R. 615, 21 W.L.R. 555, 1 W.W.R. 227, 2 W.W.R. 566, noted under "Special Adaptability."

ADDITIONAL ALLOWANCE FOR COMPULSORY TAKING.

It should be noticed also that there is no provision, either in this or in any other section of this Act (*i.e.*, The Lands Clauses Consolidation Act, 1845), to the effect that anything is to be added in respect of compulsory purchase. In practice a percentage is regularly added to the market price, and this is usually right, for the sum to be ascertained is not the market price, but the value of the land to the owner. . . . The point as to whether any percentage should be added was raised but not decided in Jervis v. Newcastle and Gateshead Water Company (1896, 7), 13 T.L.R. 14, 312: Browne and Allan on Compensation, 2nd ed., 97.

The fact that lands have been taken under compulsory process does not alter the principle of valuation, and the customary addition of 10 per cent. can only be justified as a part of the valuation and not as an addition thereto. In practice the 10 per cent. is applied to the value of lands only, and not to incidental damage; this percentage may be taken to cover various incidental costs and charges to which an owner is subject whose land has been taken, and, if no percentage were added, such incidental costs and charges would have to be considered in assessing the amount of the compensation. In In re Athlone Rifle Range (1902), 1 Ir. R. 433, an addition of 20 per cent. was disapproved. In Jervis v. Newcastle and Gateshead Water Company (supra), an amount added for compulsory purchase was disallowed on the ground that the purchase was not compulsory: Cripps on Compensation, 5th ed., p. 111.

In Arnold on Damages and Compensation, p. 230, this statement is adopted.

The practice of making this addition is probably one of those "*formulæ*" of which Lord Watson, referring to "certain so-called principles of valuation," spoke of in North and South Western Junction Railway Company v. Brentford Union, L.R. (1888) 13 A.C. 592, 594, and with reference to which the Lord Chancellor (Lord Loreburn), in Great Central Railway Company v. Banbury Union, L.R. (1909) A.C. 78, 85, 25 T.L.R. 143, 78 L.J.K.B. 225, 100 L.T. 89, said: "No doubt this method is not ordered by the statute. It is, to use Lord Watson's phrase, a '*formula*.' Nevertheless, though Courts of law have never said that it must be adopted, it is in ordinary cases a sound way of fixing the true value."

In In re Athlone Rifle Range (supra), p. 438, it was said that something for the annoyance of being disturbed in the possession and the difficulty and delay of procuring other suitable premises was usually allowed by arbitrators.

In Symonds v. Rex (1903), 8 Ex. C.R. 319, it was held that where the actual value of the land can be closely and accurately determined, a sum equivalent to 10 per cent. of the actual value should be added to it for the compulsory taking, but where that cannot be done and the price allowed is liberal and generous, nothing should be added for the compulsory taking.

In Dodge v. Rex (1906), 38 S.C.R. 149, Idington, J., spoke of a percentage being usually added to "cover contingencies of many kinds": p. 156.

It was said by Britton, J., in In re Herriman and Owen Sound (1910), 1 O.W.N. 759, 16 O.W.R. 98, that there is no ground for an arbitrary addition of 10 per cent. to the value of the land because it is compulsorily taken.

In Rex v. New Brunswick Railway Company (1913), 14 Ex. C.R. 491, 497, Audette, J., added 10 per cent. for compulsory taking.

In Rex v. Macpherson (1914), 15 Ex. C.R. 215, 232, 3, 20 D.L.R. 988, it was said by Cassels, J., that "it has been usual in most cases to make an allowance of some kind in order to recoup the purchaser for certain contingent items which cannot be taken into account," and, after referring to what is said on the subject by the three text writers which have been referred to, he went on to say: "I may say that, having regard to the decisions in our

Courts, there seems to be no doubt that the principles enunciated in the cases decided under The Lands Clauses Compensation Acts have been adopted by our Courts. I fail to see, however, that any hard and fast rule as to a fixed allowance should be adhered to," and he allowed in that case 5 per cent.

In an earlier case, Rex v. Condon (1909), 12 Ex. C.R. 275, 282, 3, the same Judge had said: "Next comes the indefinable allowance for compulsory expropriation, in other days computed at about 50 per cent. on the value, nowadays at about 10 per cent. I do not understand the theory of the allowance. If it is intended to cover expense of moving, etc., I do not see why it should be added to the value of the land. There seems, however, to be an allowance of this character recognized."

Mr. Justice Hodgins referred to the question in In re National Trust Company and The Canadian Pacific Railway Company (1913), 29 O.L.R. 462, 474, 15 D.L.R. 320, 330, but does not express any opinion as to it beyond saying that "it (*i.e.*, the practice of making the allowance) does not seem to be accepted as settled law."

The question came before the Supreme Court of Canada in the recent case of Rex v. Hunting (1916), 32 D.L.R. 331, and there was a difference of opinion as to it. The Chief Justice and Idington, J., treated it as well settled that the landowner was entitled to have the 10 per cent. added, though the Chief Justice said that "perhaps there might be cases in which it ought not to be allowed."

Anglin, J., said that "the authority for fixing the 'additional allowance' at 10 per cent. depends entirely upon practice," and was of opinion that as, where the owner is in actual occupation, the additional allowance is limited to 10 per cent., a substantial reduction might well be made "when such an important item of inconvenience and possible loss as disturbance in occupation, involving the finding of other suitable premises, is wholly absent," and he was of opinion that 4 per cent. should be allowed for "disturbance in actual occupation, including the inconvenience of finding other suitable premises, and 6 per cent. to cover all other expenses, damage and inconvenience to the deprived owner entailed by the taking of his property."

Brodeur, J., was of opinion that the allowance should not be made where "the price allowed is liberal and generous," and that it should not be made in the case before the Court because (1) the owners were receiving a very large and liberal compensation for their lands taken; (2) they were not occupying their lands and will not suffer any damage by removal; (3) the amount which they are receiving will give them an immediate return larger than the rents they were receiving, and they do not in that regard suffer any damages.

Duff, J., was of opinion that the appeal to add the 10 per cent. should be dismissed, but gave no reasons.

It is hazardous, in view of all this, to express an opinion upon the question, but the suggestion is ventured that the effect of the cases is that it will be proper to make the allowance save in exceptional cases, and that in them it may be reduced, and it is probable that some such mode as that favoured by Anglin, J., will be found to be a satisfactory method of dealing with the question, and it must be taken to be the law, as laid down by the Supreme Court of Canada, because the judgment of the Court was entered in accordance with his view.

It has, however, since been held by Audette, J., in Raymond v. Rex (1916), 16 Ex. C.R. 1, 29 D.L.R. 574, that the allowance ought not to be made when the property was acquired for the open purpose of speculating on the chances of its being expropriated; and in In re Watson and Toronto (1916), 38 O.L.R. 103, 111, 2, 32 D.L.R. 637, the Chief Justice of the Common Pleas expressed the opinion that it is not proper, where full compensation has been allowed, to add any arbitrary amount to the sum fixed by the arbitrator, and Masten, J., appears to have been of a different opinion, and to think that the "10 per cent. rule" has received the sanction of the Supreme Court of Canada.

"Injuriously affected."—"When no land has been taken, the words "injuriously affected," or words of similar import, are limited to loss or damage under the following heads:—

"1. The damage or loss must result from an act made lawful by the statutory powers of the promoters.

"2. The damage or loss must be such as would have been actionable but for statutory powers.

"3. The damage or loss must be an injury to lands, and not a personal injury or an injury to trade.

"4. The damage or loss must be occasioned by the construction of the authorized works, and not by their user."

Cripps on Compensation, 5th ed., p. 136.

"(1) Statutory compensation is given only for acts authorized to be done in the exercise of statutory powers. If an act which the promoters are authorized by law to do is done in a proper manner, though the act so done works a special injury to a particular individual, the individual injured cannot maintain an action, and his only remedy is by compensation. If damage is caused by an act which, notwithstanding the statute containing or incorporating the compensation clause, is not made lawful, the remedy by action is not taken away, and is open to the person injured": Ib. p. 137.

"(2) An owner is not injuriously affected or entitled to compensation unless the damage is such that, but for the statutory authority, it would have been actionable. Since no action can be brought where damage has resulted from the authorized use, without negligence, of statutory powers, the right to compensation is the substituted remedy which the legislature has provided. Where a local authority had a general implied right of access to sewers, and such access had not been prevented, but only rendered less easy and convenient, it was held that there would have been no right of action by the local authority, supposing the company had not been protected by the powers of their Act, and that, consequently, no claim to compensation could be sustained": Ib. p. 138-9.

"The third principle—that compensation is only given to the extent that the value of property as property, in its then state and condition, and independently of its particular use, is depreciated—has only a modified application, even if it applies at all, when compensation is claimed for injury done to lands held with lands taken. Where the damage complained of has arisen from acts done on the lands taken, the measure of compensation for damage done to lands held therewith is the full consequential loss which the owner has sustained by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of statutory powers": Ib. p. 150.

"The fourth principle—that an owner is only entitled to compensation for damage done by the construction of the authorized works, and not for damage done by their user—is not applicable where the lands injured are held with lands taken. In this case, the measure of compensation is the depreciation in value of the premises damaged, assessed not only in reference to the loss occasioned by the construction of the authorized works, but also in reference to the loss which may probably result from the nature of their user. In other words, the use for which works have been constructed is an element in determining the amount of compensation payable to an owner, so far as such use has a tendency to depreciate the value of the lands which are affected": Ib. p. 152.

There is no injurious affection within the meaning of this section unless "some damage has been occasioned to the land itself in respect of which, but for the statute, the" claimant "might have maintained an action. The injury must be an actual injury to the land itself, as by loosening the foundation of buildings on it, obstructing its light or its drains, making it inaccessible by lowering or raising the ground immediately in front of it, or by some such physical deterioration: per Lord Cranworth in Ricket v. Metropolitan Railway Company, L.R. (1867) 2 H.L. 175, 198, 36 L.J.Q.B. 205.

In Metropolitan Board of Works v. McCarthy, L.R. (1874) 7 H.L. 243, 43 L.J.C.P. 385, Lord Chelmsford accepted, subject to a qualification afterwards mentioned, as a guide for the decision of compensation cases, the definition relied on by Mr. Thesiger, Q.C., in his argument, which Lord Chelmsford stated to be:—

"Where by the construction of works authorized by the legislature there is a physical interference with a right, whether public or private, which an owner of a house is entitled by law to make use of, in connection with the house, and which gives it a marketable value apart from any particular use to which the owner may put it, if the house, by reason of the works, is diminished in value, there arises a claim to compensation": p. 256.

The qualification subject to which this definition was accepted was that "where the right which the owner of the house is entitled to exercise is one which he possesses in common with the public, there must be something peculiar to the right in its connection with the house to distinguish it from that which is enjoyed by the rest of the world."

The Lord Chancellor (Cairns) also accepted Mr. Thesiger's definition: p. 253.

The compensation in respect of lands "injuriously affected" embraces only such damage as would have been recoverable by action if the work causing it had been executed without statutory authority: In re Collins and Water Commissioners of Ottawa (1878), 42 U.C.R. 378, 385.

A municipal corporation, at whose instance a subway was ordered to be constructed, the effect of which was to lower the grade of the highway in front of property, is not liable to the landowner for the injury done to his property notwithstanding that it is provided by the order-in-council requiring the subway to be constructed that the corporation should pay all land damages, there being no jurisdiction in the Governor-in-Council to impose that liability: Burt v. Sydney (1913), 47 N.S. 480, 15 D.L.R. 429, (1914) 50 S.C.R. 6, 16 D.L.R. 853, 50 C.L.J. 467.

It was held in Hull v. Bergeron (1913), 9 D.L.R. 28 (Que.) that where a statute provides for indemnity to be fixed by arbitration, that does not deprive the injured person of his common law recourse, if he has any, and he may, therefore, sue for damages without any reference to arbitration. In delivering the judgment of the Court, Archambeault, C.J., referred, in support of the conclusion to which the Court came, to what was said by Patterson, J., in Williams v. Raleigh (1892), 21 S.C.R. 103, 131, but it seems to have been overlooked that that learned Judge went on to say: "But if the act that injures you can be justified as the exercise of a statutory power, you are driven to seek for compensation in the mode provided by the statute if, as has sometimes happened, no such provision is made you are without remedy."

That was the exact case in Hull v. Bergeron, for by the charter of the city the corporation was given power to do the very thing which resulted in injury to the plaintiff "provided that if any person suffer thereby any real damages he be indemnified *a dire d'arbitre*."

There is no right to compensation where property is injuriously affected in the exercise of statutory powers and no provision is made for compensation: Laurentide Paper Company v. Rex (1915), 15 Ex. C.R. 499.

According to the civil law, a municipal corporation which, in the exercise of its powers, causes injury to any one is responsible for the resulting damages: Bedard v. Lochaber West (1916), Q.R. 49 S.C. 459, 29 D.L.R. 312.

Where a corporation, acting in the execution of a public trust and for the public benefit, does an act which it has statutory authority to do, and does it in a proper manner, an individual suffering special injury by reason of the act cannot maintain an action. He is without remedy unless a remedy is provided by the statute: Armour v. Regina (1915), 8 S.L.R. 368, 29 D.L.R. 676, 33 W.L.R. 312, 9 W.W.R. 928, applying East Freemantle v. Annois, L.R. (1902) A.C. 213, 18 T.L.R. 199, which was the case of a municipal corporation, under statutory authority, in order to improve a street, reducing the gradient opposite a landowner's house so that it was left on the edge of a cutting, with a drop of about six or eight feet to the road.

In Laurentide Paper Company v. Rex (1915), 15 Ex. C.R. 499, the right for the injurious affection of which the claim for compensation was made was a right which the claimant shared only in common with the rest of the public, and it was held that there was no liability.

In this case a bridge had been built under statutory authority over a river down which the claimant drove its logs, also under statutory authority, and the claim was for reimbursement of what the claimant had paid to break a jamb of logs caused by the manner in which the piers had been built.

It was also laid down that where property is injuriously affected by a railway company, in the exercise of powers conferred upon it by Act of Parliament, the company is not liable in damages for the injury unless Parliament has so provided.

DAMAGE OF A TEMPORARY CHARACTER.

The fact that damage which would have been actionable but for the statutory powers is of a permanent or temporary character does not affect the right of an owner to claim compensation, and is material only in considering the amount to be assessed: Cripps on Compensation, 5th ed., p. 144.

In Ricket v. Metropolitan Railway Company, L.R. (1867) 2 H.L. 175, 196, 36 L.J.Q.B. 205, Lord Chelmsford, L.C., expressed the opinion that the temporary obstruction of a highway which prevents the free passage of persons along it, and so incidentally interrupts the resort to a place of business, is not the subject of an action at common law as an individual injury sustained by the person carrying on the business distinguishing his case from that of the rest of the public.

This dictum was dissented from in Ford v. Metropolitan Railway Company, L.R. (1886) 17 Q.B.D. 12, 55 L.J.Q.B. 296, 2 T.L.R. 281, and was there stated not to be the law.

A mere temporary obstruction of access to premises, causing considerable inconvenience and loss of business to the occupier, may constitute damage in respect to which he is entitled to compensation: Lingke v. Christchurch, L.R. (1912) 3 K.B. 595, 28 T.L.R. 536, in which Herring v. The Metropolitan Board of Works (1865), 19 C.B.N.S. 510, 147 R.R. 683, was distinguished, and Fletcher Moulton, L.J., was of opinion that it should be overruled: p. 606.

REMOTENESS OF DAMAGE.

In fixing the compensation the ordinary principles of law as to remoteness of damage apply: Cripps on Compensation, 5th ed., p. 108.

The following two cases are referred to:—

In In re Clarke and Wandsworth (1868), 17 L.T.N.S. 549, the plaintiff was a seedsman, having an office in Covent Garden, at which he kept his stock, and a market garden at Wandsworth, in which he sowed small quantities of all the seeds in his stock-in-trade, after which he sold each parcel at a higher price by reason of his giving a warranty based on his experience of these trial crops. The Board of Works, in constructing a sewer, entered on his market garden, and so carried on their operations that it became impossible to identify the trial crops with the seed in bulk, in consequence of which he was unable to warrant his seeds, and they were depreciated in value, and the arbitrators awarded him a sum to cover this depreciation, but it was held, upon an application to set aside the award, though with some doubt, that the damage was too remote.

In In re Tynemouth Corporation and the Duke of Northumberland (1893), 89 L.T. 657, 67 J.P. 425, 19 T.L.R. 630, in which a claim for expenses which might be incurred by the landowner for educating the children of workmen employed in the construction of a reservoir for the purpose of which the land was being compulsorily taken was disallowed.

See also In re Kilworth Rifle Range (1899), 2 Ir. R. 305, in which it was held that, in assessing the value of the land taken, the arbitrator was not entitled to take into account the existence of arrears of rent due by lessees or tenants which the taking had rendered irrecoverable.

INTERFERENCE WITH RIGHT OF ACCESS TO PUBLIC THOROUGHFARE.

"The right of access from private property to a public thoroughfare is a right recognized by law as incident to the ownership of land, and any interference with this right, causing damage, entitles an owner to claim compensation.

"If an owner has suffered no injury to his rights of ownership through the obstruction of a public highway, he would have had no right of action in respect of his interest in lands even if there had been no statutory powers and he cannot maintain a claim to compensation.

"If the physical access from lands or premises to a public highway or a navigable river on which the lands or premises immediately abut is taken away or rendered less convenient, and the value of such lands or premises is depreciated thereby, the owner is subjected to an interference with his proprietary rights and is entitled to compensation. There is no distinction between a tidal river and the sea, and where an owner has a right of access and this right of access is interfered with, he is entitled to compensation.

"If, through the obstruction or narrowing of a public highway or navigable river, the right of physical access incident to the ownership of lands or premises is taken away or made less convenient, and, in consequence, the value of such lands or premises is diminished, the owner is entitled to compensation although his lands or premises do not immediately abut upon the public highway or navigable river where the alteration in question has been made."

"If the obstruction of a public highway or navigable river does not interfere with a legal right attached to the lands or premises, but merely causes an inconvenience diverting the public and occasioning a loss of custom in trade, the damage thereby occasioned to the owner is not an injury to lands or premises, and does not entitle him to claim compensation. Even if works carried out under statutory powers are unnecessarily or unreasonably delayed, the person injured by the diversion of traffic or custom has no right of action unless he can prove that the obstruction complained of affects him in a direct and substantial manner, so as to cause a special injury different from that which is common to the rest of the public. Compensation can be claimed when a diversion of traffic depreciates the market value of premises for all purposes, although evidence of actual loss of trade or of the decreased number of years' purchase should not be admitted."

Cripps on Compensation, 5th ed., pp. 142-3-4.

Cases as to Interference with Access, etc.

House of Lords.

In Caledonian Railway Company v. Walker's Trustees, L.R. (1882) 7 A.C. 259, the respondents were possessed of a spinning mill, ninety yards, from an important main thoroughfare in Glasgow, having parallel accesses on the level from two sides of the mill to the thoroughfare. A railway company, under its special Act, cut off entirely one access, substituting for it a deviated road over a bridge with steep gradients, and the other access they diverted and made less convenient, but none of the operations were carried on *ex adverso* the premises. When the Bill was before Parliament, the respondents withdrew their opposition in consideration of an agreement by which the company undertook that, in the event of the land of the respondents and of others being injuriously affected by the construction of any of the works proposed by the Bill, their claim to compensation should not be barred by reason of the company not taking part of their land, and it was held that, though the agreement gave no right to compensation, the trustees were entitled to it under the Railways and Land Clauses Consolidation (Scotland) Acts, 1845.

Lord Selborne, L.C., in his speech, at pp. 284-5, said:—

"It was argued for the appellants that these authorities (*i.e.*, the authorities cited in support of the claim for compensation) ought not to be extended to any case of the obstruction of access to private property by a public road, when such obstruction is not immediately *ex adverso* of the property. This limitation, however, seems to me arbitrary and unreasonable, and not warranted by the facts either of" (referring to two of the cases). "A right of access by a public road to particular property must, no doubt, be proximate and not remote or indefinite, in order to entitle the owner of that property to compensation for the loss of it; and I apprehend it to be clear that it could not be extended, in a case like the present, to all the streets in Glasgow through which the respondents might from time to time have occasion to pass for purposes connected with any business which they might carry on upon the property in question. But it is sufficient for the purposes of the present appeal to decide that the respondents' right of access from their premises to Eglinton Street, at a distance of no more than ninety yards, was direct and proximate, and not indirect or remote."

CASES.

ONTARIO.

An arbitrator to whom is referred a claim for compensation for injury to land caused by lowering the grade of an adjoining highway has no power to direct a municipal corporation to maintain a retaining wall: In re Burnett and Durham (1899), 31 O.R. 262.

It was held in In re Medler and Arnot and Toronto (1902), 4 Can. Ry. Cas. 13, that a landowner, whose land was distant 125 feet from a highway, was not entitled to compensation for the deviation and stopping up of part of it.

In Rex v. McArthur (1904), 34 S.C.R. 570, the suppliant, in common with all others, was cut off from one access to Prescott by what is known as "the old highway," though all other methods of access or egress to or from the village remained the same, but another road was substituted in lieu of it, so that the suppliant still had access to Prescott, although not by so convenient a road, and it was held that the suppliant was not entitled to compensation on account of the closing of the old highway. In stating the opinion of the Court, Nesbitt, J., said that he did not think that any case could be found which, under the English law, holds that for such an obstruction an action could be maintained, and that it was absolutely clear from all the authorities that mere inconvenience of a person or loss of trade or business is not the subject of compensation: p. 575.

The remedy of a landowner for raising the level of a street, whether the work is done under a by-law or by the inherent authority of the municipal council as conservator of roads, is compensation, and an action does not lie: In re Dunn and Stratford (1905), 5 O.W.R. 65.

Where a highway which starts from another highway, running at right angles to the highway on which the residence of a landowner fronts, at a point directly opposite his residence, is stopped up by a by-law of the municipal council, the landowner is entitled to compensation for the injurious affection of his land by the stopping up: In re Tate and Toronto (1905), 10 O.L.R. 651.

Where proximity of property to a highway, a portion of which is stopped up, enhances its value, and it is depreciated by the stopping up of the highway, the landowner is entitled to compensation although the property does not abut or front upon the highway which is closed: In re Taylor and Belle River (1910), 1 O.W.N. 609, 15 O.W.R. 733, affirmed (1910) 2 O.W.N. 387, 17 O.W.R. 815.

In In re Neal and Port Hope (1914), 6 O.W.N. 701, 7 O.W.N. 264, the landowner was held to be entitled to compensation for stopping up a street upon which his land abutted, though it did not abut upon the part of it that was stopped up.

British Columbia.

The owner of land abutting on a highway, the grade of which has been lowered by the corporation, is entitled to have the compensation determined by arbitration: Roman Catholic Bishop of New Westminster v. Vancouver (1908), 14 B.C.R. 136, 9 W.L.R. 587.

Where a part of the width of a highway required for the construction of a railway is closed by a municipal by-law, which does not merely authorize the railway company to construct the railway along the street, a landowner whose access to his land abutting on the highway is thereby interfered with is entitled to compensation from the corporation as for damages occasioned by altering the highway under The Municipal Act, R.S.B.C. (1911), c. 170, s. 53 (176): Ramsay v. West Vancouver (1915), 21 B.C.R. 401, 22 D.L.R. 826, 31 W.L.R. 415, 8 W.W.R. 835.

Quebec.

A municipal corporation which exercises its right to close a street or public way is liable for damage caused to adjoining owners by increasing the difficulty of access to their lands. When the injury caused results in additional expense, varying from time to time, of conducting a business, but without destroying it, the owner can recover only this excess in expense thus incurred. He cannot demand a round sum for depreciation in value of his property and trade which is uncertain and impossible to determine: Montreal v. Montreal Brewing Company (1909), Q.R. 18 K.B. 404, varying (1906) Q.R. 30 S.C. 280.

A municipal corporation which raises the level of a street, public place, park, etc., is liable to pay to the owners of land fronting on it, as indemnity for a partial expropriation, the damages caused to their buildings: Paquet v. Montreal, (1913) Q.R. 22 K.B. 353.

In Quebec a municipal corporation is liable in damages to abutting owners where the level of a street or sidewalk is raised, causing depreciation of their property, and such a change of level may be considered a partial expropriation of the owner's rights: Hull v. Bergeron (1913), 9 D.L.R. 28; D'Ambrosio v. Montreal (1914), Q.R. 45 S.C. 282.

In Houle v. St. Louis-De-Gonzague (1915), Q.R. 49 S.C. 136, it was held by the Court of Review, reversing the judgment of the Superior Court of the district of Beauharnois, that the plaintiff's ingress to and egress from his property, his view and his light, were not interfered with by the raising of the level of a bridge and a connecting highway, but the Court of King's Bench reversed the judgment, upon the ground that the evidence established that the plaintiff had suffered a special damage, and that what had been done imposed upon him a servitude which was not imposed upon the ratepayers at large: (1916) Q.R. 25 K.B. 256.

In delivering the judgment of the Court of King's Bench, Carroll, J., said that he was of opinion that if a municipal corporation makes improvements to its roads or its bridges, a person who does not suffer any special injury has not on that account recourse in damages against the municipal corporation, but if he suffers a special damage, which constitutes for him a permanent servitude that the other ratepayers have not to submit to, he is entitled to an indemnity.

A municipal corporation may demolish a bridge which connects land on the north with a public road, and open another road to the north-west, but if, in making these changes, it causes injury, direct and immediate, to a landowner by the loss of his harvest in the operation of his farm, and obliges him to construct another bridge, it is bound to indemnify him: Bedard v. Lochaber West (1916), Q.R. 49 S.C. 459, 29 D.L.R. 312.

SASKATCHEWAN.

The work of grading streets which a municipal corporation has statutory authority to do is a work done in the "exercise of powers under the Act," and the owner of land which is injuriously affected is entitled to compensation for the injurious affection, though no part of the land itself is taken: Prince Albert v. Vachon (1916), 27 D.L.R. 216, 33 W.L.R. 470, 34 W.L.R. 107, 9 W.W.R. 1128, 10 W.W.R. 359.

A right of access to property from a public road at a distance of not more than seventeen yards is direct and proximate, and interference with that right may give rise to a claim for compensation for closing the road: Cassidy v. Moose Jaw (1915), 9 W.W.R. 794.

Where part of the foreshore between high and low water mark, belonging to a riparian owner, is expropriated for the purposes of a government work, he is entitled to compensation for the land taken, and where the owner's riparian rights as to the remainder of his land are injuriously affected by the construction of the work, he is entitled to compensation on the basis that those rights were peculiar to him and distinct from those held in common by him with the rest of the public: Pickels v. Rex (1912), 14 Ex. C.R. 379, 7 D.L.R. 698.

"Beyond any advantage which the owner may derive from any work, etc."—In cases under The Imperial Land Clauses Acts where lands have been taken, it has never been contended that a purchasing company can claim to set off against the value of such lands any enhanced value consequent on the construction of the authorized works to the adjoining lands of the same owner. Where lands have not been taken, but only injuriously affected, the claim has been made and disallowed: Cripps on Compensation, 5th ed., p. 104, citing Senior v. Metropolitan Railway Company (1863), 2 H. & C. 258, 32 L.J. Ex. 225, and Eagle v. Charing Cross Railway Company, L.R. (1867), 2 C.P. 638, 36 L.J.C.P. 297.

"**Advantage**" is not limited to the increase in value from the contemplated work as direct and peculiar to the particular property, but includes such as may be shared by that property in common with other lands benefitted by the work: In re Pryce and Toronto (1889), 16 O.R. 726, (1892) 20 A.R. 16; In re Richardson and Toronto (1889), 17 O.R. 491.

In Toronto Junction v. Christie (1895), 25 S.C.R. 551, 561, 2, it was said by Gwynne, J.:—

"What the statute contemplates and the utmost it authorizes, is that the value of any benefit, if any there be, which the injured property, that is to say, which the property in its injured condition, may derive from the work which causes the injury, if it can be ascertained and is not wholly speculative, may be deducted from the amount which, apart from the value of such benefit, would be required to afford due compensation for the injury.

"If, for example, property be injured in such a manner that it is necessary that the injury caused should be repaired before any benefit could accrue, the statute is not open to a construction so at variance with common justice and common sense as that the prospective speculative estimate of the value of such benefit should be deducted from the amount necessary to repair the injury and to put the property into a condition to receive such benefit. Such benefit could not be said to be derived from the work causing the injury, but from the outlay expended to repair the injury. In the present case there is no suggestion whatever in the evidence that the plaintiff's property in the condition in which it was when injured, has derived or could derive any benefit from the work which has caused the injury; all that is suggested is that if the plaintiff's property had been quite different from what it was, that is, if it had been a vacant lot, it would in that case have derived some benefit from the work, the value of which benefit was so wholly speculative and unsubstantial and unreal that no attempt even was made to estimate it, but as to the plaintiff's property in the condition in which it was, being house property, the evidence is that nothing but injury resulted to it from the corporation work, which injury must continue until repaired or until due compensation as required by the statute shall be given therefor."

The case was one of raising the grade of a street on which the plaintiff's property abutted, and it is difficult to follow this reasoning. One would have thought that, if it were practicable, as it, no doubt, was, to raise the level of the land and raise the house to the level of the street, the measure of the damage sustained was the cost of doing that, to which would be added any depreciation in the value of the house occasioned by the raising of it and any loss resulting from the building having to be vacated while the raising of the level of the lot and of the house was going on, and that it was proper to deduct from the amount of the damage thus ascertained the amount of any increased value which the property derived from the improvement of the street.

"Beyond any advantage from the contemplated work" means from the contemplated work alone, and does not authorize the setting off against the damages the enhancement of the value of the land of the owner which will accrue from stopping up a road as part of a scheme for granting facilities to a lumber company: In re Brown and Owen Sound (1907), 14 O.L.R. 627.

This case was followed by Kelly, J., in In re Neal and Port Hope (1914), 6 O.W.N. 701, affirmed 7 O.W.N. 264.

In In re Fowler and Nelson (1914), 6 O.W.N. 409, 7 O.W.N. 265, the advantage to the landowner from the substitution of a new road for an old one was set off, but the disadvantage from severance exceeded it.

Construction of lavatory in highway.

In In re J. F. Brown Company, Limited, and Toronto (1916), 36 O.L.R. 189, 29 D.L.R. 618, the Divisional Court was equally divided in opinion as to the right of landowners to compensation under this section for the injurious affection of their land upon which they had built and were carrying on the business of a departmental store, by the erection and maintenance by the municipal corporation upon and under a city street on which the land abutted, not opposite to but within eight or ten feet of it, of public conveniences (lavatories, urinals, etc.), no land of the claimants having been taken and the highway not having been obstructed.

The Chief Justice of the Common Pleas and Riddell, J., were of opinion that the landowners were not entitled to compensation because: (1) the act which caused the injurious affection, if any, for which they claimed was not made lawful only by the enactment which provides for compensation (*i.e.*, The Municipal Act); (2) that the construction and maintenance of the conveniences would not have been actionable if the statutory power had not been conferred, because the highway was not obstructed; (3) that the injurious affection complained of was really an injury to the claimants' business, not to their property; (4) that as compensation is limited to damages necessarily resulting from the work, no compensation should be paid for alleged "seepage," smoke, and odours, and the misconduct of men using the conveniences, for injury done by such matters is actionable, and the first two might have been and might be easily prevented, but for the landowner's objection and obstruction.

In the view of Riddell, J., the "seepage" did not necessarily result from the corporation building the conveniences, but from the manner in which they were built, and damages for such a cause could not be claimed in arbitration. So, too, with regard to the smoke and odours, which could be avoided by a standpipe sufficiently high or by other means. The alleged nuisance caused by men arranging or disarranging their clothing in the street was not a necessary consequence. A couple of policemen could put a stop to that indecency in short order; that the access to the property of the landowner was not interfered with.

The view of Lennox, J., was that the fact of the conveniences being where they were injuriously affected and greatly depreciated the value of the claimants' property for any purpose.

Masten, J., quoted with approval the summary of the legal principles applicable in such cases in Cripps on Compensation, 4th ed., p. 123:—

"When no land has been taken, the words 'injuriously affected' or words of similar import are limited to loss or damage under the following heads:

"(1) The damage or loss must result from an act made lawful by the statutory powers of the promoters.

"(2) The damage or loss must have been such as would have been actionable but for the statutory powers.

"(3) The damage or loss must be an injury to lands, and not a personal injury or an injury to trade.

"(4) The damage or loss must be occasioned by the construction of the authorized works and not by their user."

The learned Judge was of opinion that the claimants' land was injuriously affected, and that section 325 applied to the exercise of the power conferred on municipal corporations by The Municipal Act to erect lavatories on public highways, that, but for the conferring of that power, the claimants would have been entitled to maintain an action for the damages occasioned to their land by the construction of the lavatories, and were, therefore, entitled to compensation.

This case contains a very full citation and discussion of the authorities; it is now in appeal and is standing for judgment in the Supreme Court of Canada.

Cases as to Necessity of Compensation being Fixed or Paid before Entry on the Land.

A corporation must compensate the owner of land through which it is proposed to lay a sewer before entering on the land for the purpose of constructing the sewer: Arnold v. Vancouver (1903), 10 B.C.R. 198.

It is not necessary, under the provisions of The Rural Municipalities Act (Alta.), s. 196 (5), that the amount of the compensation and damage should be ascertained and fixed before the corporation actually takes the land: In re Blomfield and Starland (1915), 9 A.L.R. 203, 25 D.L.R. 43, 32 W.L.R. 905, 9 W.W.R. 552, distinguishing Saunby v. London Water Commissioners, L.R. (1906) A.C. 110, 22 T.L.R. 37.

Effect of award.

An award of arbitrators appointed under s. 133 of The Vancouver Incorporation Act, 1900, cannot be enforced summarily under s. 13 of The Arbitration Act, because all that has been determined is the amount payable, and not the right to compensation: In re Northern Counties Investment Trust and Vancouver (1901), 8 B.C.R. 338.

The view of Irving, J., by whom this case was decided, was that under a section similar to this it was not for the arbitrators to determine whether or not any compensation was payable, but only to determine the amount payable on the assumption that the landowner was entitled to compensation—"in other words, to fix the *quantum* of compensation."

This ruling is in accordance with the law in England, where it is held that questions of title or of the validity of the claim are not within the jurisdiction of the assessing tribunals, but are left to be determined in subsequent proceedings: Cripps on Compensation, 5th ed., p. 102.

This is provided in Ontario by s. 337.

SEVERANCE.

"Lands injured are not held with lands taken, if they are not otherwise connected than by being held under the same title. When lands injured are held by the same owner, and for the same common object as lands taken, they are held therewith . . . although they are not held under the same title and are not in physical contiguity": Cripps on Compensation, 5th ed., p. 148.

Upon the expropriation of lands under The Railway Act of Canada, the owner is not entitled to compensation for severance from other lands owned by him unless the lands taken are so connected with or related to the lands left that he is prejudiced in his ability to use or dispose of the latter, and, therefore, where the landowner had subdivided a tract of land into building lots and registered a plan of the subdivision, and had from time to time sold a great number of them, but they were scattered all over the tract, and sold them out and out without taking any restrictive covenants from the purchasers, and there was no building scheme other than the lay-out shown on the registered plan, which derived its fixity from the legislation affecting it, and not from any notice to the purchaser or any private obligation entered into by him, and the landowner had made an end of the unity of the tract (other than bare unity of ownership), and had elected once for all to treat the lots as a commodity to trade in, it was the case of one owner of many holdings but not one holding, nor did the unity of ownership "conduce to the advantage or protection" of them all as one holding, and the landowner was not entitled to compensation for the severance of the expropriated lots from the remainder of the lots owned by him: Holditch v. Canadian Northern Ontario Railway Company (1914), 50 S.C.R. 265, 20 D.L.R. 557, L.R. (1916) 1 A.C. 536, 27 D.L.R. 14, 32 T.L.R. 294.

It would seem that a narrow view was taken in this case. Compare what was said by Lord Watson in Cowper Essex v. Acton (supra), p. 167: "I shall not attempt to lay down any general rule upon this matter. But I am prepared to hold that where several pieces of land, owned by the same person, are so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act, so that if one piece is compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation."

In estimating compensation where part of a residence is taken, leaving the rest of it, and the remaining land of little value for residential purposes in a locality that has become a business district, it is improper to allow, in addition to the value of the land for commercial purposes, compensation for injury to the house because of the severance of part of it: Hawkins v. Halifax (1913), 47 N.S. 233, 10 D.L.R. 747, 12 E.L.R. 167, following Ossalinsky v. Brown, cited in Browne and Allan on Compensation, 2nd ed., Appendix, p. 659.

See also cases noted under s. 460 (8).

MISCELLANEOUS CASES.

The right of a landowner to compensation is a vested right, and is not disturbed by the subsequent alienation of the land: In re Dunn and Stratford (1905), 5 O.W.R. 65.

The assessment of damages by taking the average of estimates of the witnesses is wrong in principle: Fairman v. Montreal (1901), 31 S.C.R. 210 (Que.), following Grand Trunk Railway Company v. Coupal (1898), 28 S.C.R. 531 (Que.).

Sales of adjoining properties afford a safe *primâ facie* basis for the valuation of lands in assessing the compensation for expropriation of land: Rex v. Murphy (1909), 12 Ex. C.R. 401.

In assessing compensation for lands taken by the Crown for a public work, sales made by the landowner to the Crown of other lands for the purposes of the work in the neighbourhood of those taken may be relied on as establishing the market value of the lots expropriated: Rex v. Bickerton (1913), 15 Ex. C.R. 61.

Opinion evidence of persons competent to speak on the subject is admissible to prove the general course of values of what has been shown to be a certain class of land in the vicinity, and its reception does not contravene the rule prohibiting proof of collateral issues as to separate properties in the neighbourhood: In re Billings and The Canadian Northern Railway Company (1914), 31 O.L.R. 329, 336-7, 19 D.L.R. 840, approving Levin v. New York Elevated R.R. Company (1901), 165 N.Y. 572.

The prices paid for properties purchased in the immediate neighbourhood of land expropriated afford the best test and the safest starting point for an inquiry into the true market value of the land taken: Rex v. McLaughlin (1915), 15 Ex. C.R. 417, 26 D.L.R. 373.

Taking as the criterion of the value of land expropriated the price of a single lot sold in a different locality, then making an imaginary subdivision of the land expropriated into small lots and an imaginary sale of all of the lots to workmen at one-half of the standard price, and making a deduction of 25 per cent. from the imaginary total purchase price of these imaginary lots for "slowness with which the lots would be disposed of, increased taxes to be paid during the sales, interest which would not be obtained during the sales," and "commission on the sales and other incidental expenses," is not a proper method of arriving at the compensation, although such matters may be taken into consideration in ascertaining the fair value of the land. Ordinarily the market price should govern: In re Slater and Ottawa (1916), 10 O.W.N. 401, 28 D.L.R. 360.

326.—(1) Except where the person entitled to the compensation is an infant, a lunatic, or of unsound mind, a claim for compensation for damages resulting from his land being injuriously affected shall be made in writing, with particulars of the claim, within one year after the injury was sustained, or after it became known to such person, and, if not so made, the right to compensation shall be forever barred.

Claim for compensation, when and how to be made.

The time within which claims for damages for injurious affection must be made runs from the completion of the work by which it is caused: Winnipeg v. Toronto General Trusts Corporation (1911), 20 Man. L.R. 545, 16 W.L.R. 213, affirmed (1911) 20 Man. L.R. 545, 18 W.L.R. 50.

It was held in Prince Albert v. Vachon (1916), 27 D.L.R. 216, 33 W.L.R. 470, 34 W.L.R. 107, 9 W.W.R. 1128, 10 W.W.R. 339 (Sask.), that a similar provision to this enacted after the year had elapsed did not apply to a claim which arose upwards of a year before the enactment came into effect.

A claim made before the passing of a law prescribing new formalities in bringing such claims, which would have invalidated the claim if made after passing of the enactment, is not affected by the change in the law: Passmore v. Edmonton (1916), 33 W.L.R. 470, 9 W.W.R. 1078 (Alta.), following Glynn v. Niagara Falls (supra notes to s. 8).

(2) In the case of an infant, a lunatic, or a person of unsound mind, the claim shall be so made within the same period, or within one year after he ceased to be under the disability, whichever shall be the longer, or in case of his death while under the disability within one year after his death, and, if not so made, the right to compensation shall be forever barred.

Case of infant, lunatic, etc.

(3) This section shall not apply where the expropriating by-law provides for acquiring an easement or right in the nature of

Exception as to acquiring easement.

an easement, and the damages arise from the exercise of such easement or right. 3-4 Geo. V. c. 43, s. 326.

The right of access from private land to and from a highway is "an easement or other right in the nature of an easement" within the meaning of this subsection: Twin City Ice Company v. Ottawa (1915), 34 O.L.R. 358, 24 D.L.R. 873.

Appointment of person to act for owner who is unknown or cannot be found.

327.—(1) If the owner of the land is unknown, or cannot be found, or if there is no person competent to contract with the corporation for the sale to it of the land, and to convey it to the corporation, the Judge may, on the application of the corporation, appoint a person to act for the owner, and all acts done, contracts made, and conveyances executed by such person, shall be as valid and effectual as if the same were done, made or executed by the owner, and he were of full age and competent to do the act, make the contract or execute the conveyance.

Payment of compensation into Court.

(2) In the cases provided for by subsection 1, the amount of the compensation agreed upon or awarded shall be paid into the Supreme Court, with the privity of the Accountant of the Supreme Court, subject to further order. 3-4 Geo. V. c. 43, s. 327.

Compensation to stand in the stead of land.

328. The compensation shall stand in the place of the land, and shall be subject to the limitations and charges, if any, to which the land was subject; and any claim to or incumbrance upon the land, or any part of it, as against the corporation, shall be converted into a claim upon the compensation. 3-4 Geo. V. c. 43, s. 328.

Interest on compensation.

329.—(1) Where it is made to appear to a Judge of the Supreme Court that for any reason it is proper that the compensation should be paid into Court, the Judge may give leave to the corporation to pay it into Court, with interest at the rate of six per cent. per annum for six months.

Notice of payment into Court.

(2) Notice of the payment into Court, and calling upon all persons entitled to the land, or any part of it, to file their claims to the compensation, or any part of it, shall be published in such newspaper and for such time as the Judge may direct.

(3) All claims to or upon the compensation shall be determined by a Judge of the Supreme Court or in such manner as he may direct.

Claims, how determined.

(4) The costs of the proceedings, including allowances to witnesses, shall be paid by the corporation or by such person as the Judge may direct;

Costs.

As a general rule the costs of the motion for payment of money out of Court should be paid by the expropriating body: In re Scott (1908), 12 O.W.R. 1162, following In re Toronto and Niagara Power Company and Webb (1907), 10 O.W.R. 402.

These decisions were under an Act which provided that "the costs of the proceedings or any part thereof shall be paid as the Court deems it equitable to order."

Where the Court has a discretion as to awarding costs in expropriation proceedings, the principle is that, when the proceeding is entirely for the benefit of the expropriating body and no factious opposition has been raised by any one, it should pay the costs as part of the price of the land: In re Linden and Toronto (1915), 7 O.W.N. 681.

(5) If an order for distribution is obtained in less than three months from the payment into Court the Judge may direct a proportionate part of the interest to be returned to the corporation.

Refund of interest.

(6) The payment into Court shall discharge the corporation from all liability in respect of the compensation. 3-4 Geo. V. c. 43, s. 329.

Payment into Court to discharge corporation.

330. After payment into Court of the compensation, a Judge of the Supreme Court may, upon the application of the corporation, make an order, vesting in the corporation the land in respect of which the compensation was payable, and the order shall have the same effect as a vesting order made under the provisions of *The Judicature Act.* 3-4 Geo. V. c. 43, s. 330.

Order vesting land in corporation.

Rev. Stat. c. 56.

The adoption of a by-law ordering the expropriation of land for municipal purposes does not operate as a conveyance of it; it is only on payment of the indemnity and delivery of the receipt to the secretary-treasurer that the legal title passes to the corporation: Price v. Tremblay (1909), Q.R. 18 K.B. 375.

Taking, etc., lands for public work.

331.—(1) Where the council of a city or town is desirous of entering upon any work or undertaking, for which land is required to be expropriated, or, in the execution of which, land may be injuriously affected, the council may file, in the office of the clerk, plans and specifications of the work or undertaking, which shall show the names of the owners of the land to be affected, the land to be expropriated, and the nature and extent of any easement, or right in the nature of an easement, to be acquired, or certified copies of such plans, and specifications.

Filing plans and specifications.

Service of notice of intention to construct works, etc.

(2) The clerk shall cause to be served upon every owner of land to be expropriated, or which may be injuriously affected, a notice of the council's intention to proceed with the work or undertaking, and to expropriate the land necessary therefor, and that such plans and specifications may be inspected at his office, and that any claim for compensation on account of the land being injuriously affected must be filed in his office, with a statement of the amount claimed, within sixty days, or, if the person served resides out of Ontario, within ninety days, from the service of the notice.

Filing of claim.

Claim not filed to be barred.

(3) If a claim is not so filed within the period mentioned in subsection 2, it shall be forever barred, unless, upon application to a Judge of the Supreme Court, made not later than one year from the service of the notice, and, after seven days' notice to the corporation, the Judge allows the claim to be made.

Appeal.

(4) Either party may appeal from the decision of the Judge to a Divisional Court.

Claims not barred where plans insufficient.

(5) Nothing in this section shall have the effect of barring a claim, if the plans and specifications filed do not disclose or sufficiently disclose that the injury in respect of which the claim is made will be caused by the work or undertaking.

For claims of infants, lunatics, etc.

(6) This section shall not apply to the claim of an infant, a lunatic or a person of unsound mind, or where the expropriating by-law provides for acquiring an easement or right in the nature if an easement and the land is injuriously affected by the exercise of such easement or right. 3-4 Geo. V. c. 43, s. 331.

PART XVI.

ARBITRATIONS.

In Patchell v. Raikes (1904), 7 O.L.R. 470, 479, referred to in notes under "Actions by and against municipal corporations," "Ratepayers," preceding s. 348, Garrow, J.A., said that a corporation may not refer to arbitration a question of law, though it may be that it may refer a question of fact. See observations as to this in those notes.

332. The provisions of this Part shall be subject to *The Municipal Arbitrations Act.* 3-4 Geo. V. c. 43, s. 332.

Application of certain Acts. Rev. Stat. c. 199.

333. Except where otherwise provided, *The Arbitration Act* shall apply to an arbitration under this Act. 3-4 Geo. V. c. 43, s. 333.

Rev. Stat. c. 65.

Where, in constructing a bridge over a river which forms the boundary line between a township and a city, owing to the raising of the approaches on the township side, land is injuriously affected for which the owner is entitled to compensation, the county only can be compelled to arbitrate in respect of the compensation.

Section 391 of 55 Vict. c. 42 did not apply to permit an arbitration between the landowner and the city and county together, nor is such an arbitration otherwise provided for by law.

In re Cummings and Carleton (1894), 26 O.R. 1.

In Saunby v. London Water Commissioners, L.R. (1906) A.C. 110, 22 T.L.R. 37, it was held, reversing (1904) 34 S.C.R. 650, that under The London Water Works Act, 36 Vict. c. 102 (Ont.), the arbitration clauses only come into operation on disagreement as to the amount of the purchase money, value, or damages arising after definite notice of expropriation and treaty or tender relative thereto.

That case was followed in Arnold v. Vancouver (1903), 10 B.C.R. 198.

Where an owner of land, upon the sale of it, reserves the right to compensation for the injurious affection of it by the closing of a highway, he is entitled to have the compensation determined by arbitration: In re Codville (1907), 16 Man. L.R. 426, 5 W.L.R. 140.

It is not necessary that there should be a disagreement as to compensation resulting from negotiations between the parties before arbitration can be resorted to: Saunby v. Water Commissioners of London, L.R. (1906) A.C. 110, 22 T.L.R. 37, distinguished. Winnipeg v. Toronto General Trusts

Corporation (1911), 20 Man. L.R. 545, 16 W.L.R. 213, affirmed (1911) 20 Man. L.R. 545, 18 W.L.R. 50.

It is not necessary under the provisions of The Rural Municipalities Act (Alta.), s. 196 (5), that the amount of the compensation and damage should be ascertained and fixed before the corporation actually takes the land: In re Blomfield and Starland (1915), 9 A.L.R. 203, 25 D.L.R. 43, 32 W.L.R. 905, 9 W.W.R. 552, distinguishing Saunby v. London Water Commissioners, L.R. (1906) A.C. 110, 22 T.L.R. 37.

The arbitration provisions of The Municipal Act, Part XVI., apply to expropriation under The Public Utilities Act, R.S.O. 1914, c. 204: In re Perram and Hanover (1916), 36 O.L.R. 582, 31 D.L.R. 142.

In case several persons interested in property taken, etc.

334. In case of an arbitration as to compensation where more persons than one are interested, but have distinct interests in the land, whether or not they are all interested in the same parcel, or some or one in one part of it, and some or one in another part, the council may by the expropriating by-law or by any subsequent by-law provide that the claims of all such persons shall be determined by one and the same arbitration. 3-4 Geo. V. c. 43, s. 334.

Appointment of arbitrators.

335.—(1) Subject to section 339 and to subsection 7 of this section where an arbitration is directed or authorized by this Act, either party may appoint his arbitrator, and give notice thereof in writing to the other party, calling upon him to appoint his arbitrator.

Service of copy of expropriating by-law.

(2) Where the arbitration is as to compensation and the notice is given by the corporation there shall be served with it a copy of the expropriating by-law, certified under the hand of the clerk and the seal of the corporation to be a true copy.

Manner of appointing arbitrator.

(3) The appointment of an arbitrator shall be in writing, and, in the case of a municipal corporation, shall be by by-law of the council, or by the head, or a member of the council, if authorized by by-law to make the appointment.

Under 1 & 2 Edw. VII. c. 77, s. 796, the appointment by the council of an arbitrator to determine the compensation to be paid for land to be expropriated must be under the corporate seal and signed by the mayor or acting mayor and the clerk or acting clerk, and it is not sufficient that a regularly signed by-law has been passed authorizing the mayor to appoint a named person as arbitrator, and that the appointment has been signed by the mayor alone under the corporate seal: Devitt v. Winnipeg (1906), 16 Man. L.R. 398, 4 W.L.R. 369.

Appointment by party notified.

(4) The party notified, except in the case provided for by subsection 5, shall within seven days after service of the notice on him appoint his arbitrator and give notice to the other party of the appointment.

Where several persons interested.

(5) In the case provided for by section 334 the persons interested shall within 21 days after service of the notice on them agree upon and appoint their arbitrator and give notice to the other party to the arbitration of the appointment.

Appointment of third arbitrator by appointed arbitrators.

(6) The arbitrators shall, within seven days from the appointment of the last appointed of them, appoint by writing a third arbitrator.

Where more than two municipalities interested.

(7) Where more than two municipal corporations are interested, each shall appoint an arbitrator, and, if there is an equality of arbitrators, the arbitrators so appointed shall appoint another arbitrator, or in default at the expiration of twenty-one days after the last of such arbitrators was appointed, the Municipal Board may, on the application of any one of the corporations interested, appoint the other arbitrator. 3-4 Geo. V. c. 43, s. 335.

Appointment of arbitrator by Judge.

336.—(1) Except in the case provided for by subsection 7 of section 335, if an arbitrator is not appointed by the party notified within seven days, or in the case provided for by section 334 within twenty-one days after notice to appoint an arbitrator, or, if the two arbitrators appointed do not, within seven days from the appointment of the last appointed one of them, appoint a third arbitrator, the Judge, on the application of either party, and on notice to the other, shall appoint as arbitrator, or third arbitrator, a fit person to act for the party who has failed to appoint, or as such third arbitrator.

When resident of municipality not to be appointed.

(2) Where the arbitration is as to compensation the arbitrator appointed by the Judge shall not be a resident of the municipality in which the land is situate. 3-4 Geo. V. c. 43, s. 336.

The limitation of one year prescribed by section 244 of The Municipal Clauses Act for commencing actions against a municipal corporation applies to mandamus proceedings to compel the corporation to appoint an arbitrator to determine the compensation for land taken for road purposes: Reg. v. Mission (1900), 7 B.C.R. 513.

In In Re Walker and South Vancouver (1913), 18 B.C.R. 480, 14 D.L.R. 446, 25 W.L.R. 824, 5 W.W.R. 389, it was held that The Arbitration Act did not apply to proceedings to compel the appointment of an arbitrator, but that The Municipal Act "aided by proceedings by way of mandamus to compel the selection of an arbitrator furnishes a code which . . . must be adhered to."

North Vancouver v. Loutet (1914), 19 B.C.R. 157, 16 D.L.R. 395, 27 W.L.R. 237, 6 W.W.R. 139. Where a municipal corporation fails to appoint an arbitrator, an arbitrator may be appointed under s. 8 (*e*) of The Arbitration Act. It is not proper to make an order requiring the corporation to appoint its arbitrator.

An application to a Judge to appoint an arbitrator is merely a step in the statutory proceedings to determine the compensation, and not an action within the meaning of s. 513 of The Municipal Act, R.S.B.C. (1911), c. 170, which bars actions against a municipal corporation if not commenced within a year from the accrual of the cause of action: Hanna v. Victoria (1915), 24 D.L.R. 889, 32 W.L.R. 916, 9 W.W.R. 761, (1916) 27 D.L.R. 213, 34 WL.R. 307, 10 W.W.R. 457 (B.C.).

The distinction between the cases of Hanna v. Victoria and Reg. v. Mission (supra) is that in the latter case the application was for a mandamus and the limitation section applied. In the former it was simply an application for the appointment of an arbitrator, as to which there was no limitation.

Appointment of arbitrators not to be deemed an admission of liability.

337. The appointment of an arbitrator by a municipal corporation shall not be deemed to be an admission of any liability on its part, and all defences and objections that would be open in an action, shall be open to either party. 3-4 Geo. V. c. 43, s. 337.

Persons disqualified from acting as arbitrators.

338. No member, officer, or person in the employment of a corporation which, and no person who, is concerned or interested in an arbitration, shall be appointed or act as an arbitrator, but no person shall be disqualified by reason merely that he is a ratepayer of a municipality concerned or interested in the arbitration. 3-4 Geo. V. c. 43, s. 338.

An alderman is disqualified from acting as an arbitrator for the corporation to determine, with other arbitrators, the value of property expropriated by the corporation: In re Abell (1901), 2 N.B. Eq. 271.

A ratepayer of the municipality is disqualified from acting as arbitrator to determine the compensation: In re Bessie B. Wilkins (1911), 41 N.B. 141.

The fact that an arbitrator is a brother of one of the parties to arbitration proceedings is ground for setting aside the award: In re Turnbull and Pipestone (1915), 24 D.L.R. 281, 31 W.L.R. 595, 8 W.W.R. 982, (1916) 29 D.L.R. 75, 34 W.L.R. 1073, 10 W.W.R. 1133 (Man.).

Arbitrator when claim under $1,000.

339. Where the arbitration is as to compensation and the amount claimed does not exceed $1,000, the same shall be determined by the Judge or by such person as he on application to him by either the corporation or the claimant upon at least seven days' notice to the other, may appoint. 3-4 Geo. V. c. 43, s. 339.

PROCEDURE.

Oath of arbitrators.

340.—(1) Every arbitrator, before proceeding with the reference, shall take and subscribe the following oath:

"I (*A. B.*) swear (*or* affirm) that I will well and truly try the matters referred to me by the parties, and a true and impartial award make in the premises, according to the evidence and my skill and knowledge."

Effect of omission to take oath.

(2) The omission of an arbitrator to take the oath shall not affect the validity of the award, unless, before the reference is begun objection is made to its being proceeded with on that account. 3-4 Geo. V. c. 43, s. 340.

Before this enactment it was held, in In re Burnett and Durham (1899), 31 O.R. 262, that the failure of the arbitrator to take the oath was fatal to his award, but that when an award is moved against on that ground it must be clearly shown that the applicant was not aware of the omission until after the making of the award.

Time of meeting, etc.

341.—(1) The arbitrators shall, within twenty days after the appointment of the last appointed arbitrator, meet at such place as they may agree upon, and proceed with the reference, but may adjourn from time to time.

The provision of subs. 1 is directory only: In re Smith and Plympton (1886), 12 O.R. 20; In re Turnbull and Pipestone (1915), 24 D.L.R. 281, 31 W.L.R. 595, 8 W.W.R. 982, (1916) 29 D.L.R. 75, 34 W.L.R. 1073, 10 W.W.R. 1133 (Man.).

The omission of the arbitrators, at their first meeting, to fix a date on or before which the award will be made, as provided by s. 204 of The Railway Act, R.S.C. c. 37, does not invalidate the proceedings: In re Horseshoe Quarry Company and St. Mary's and Western Ontario Railway Company (1910), 22 O.L.R. 429.

Where an arbitration has failed owing to an award not having been made in due time, an arbitrator appointed is *functus officio*, and it is necessary that a new appointment be made: In re Bennetto and Winnipeg (1908), 18 Man. L.R. 100, 7 W.L.R. 561.

An arbitrator is not "*functus officio*" until he has published his award, and several arbitrators may, therefore, before that has been done, revise their conclusions and decrease or increase the compensation to be awarded: Hampson v. Dupuis and Montreal (1912), 8 D.L.R. 500.

In In re White and Toronto (1917), 38 O.L.R. 337, it was held that either under s. 10, cl. (*c*), of The Arbitration Act, R.S.O. c. 65, or s. 2 (2), cl. (*e*), of The Municipal Arbitrations Act, R.S.O. c.199, the arbitrator had power, after the hearing had been concluded and the award made, to amend it so as to conform with the written reasons for it which he had filed and in which he stated that the claimant was entitled to interest from the date of the expropriating by-law and the corporation to the rents from that date, and it was also held that the arbitrator was right in so determining.

The award may be made by a majority of several arbitrators: The Arbitration Act, R.S.O. c. 65, schedule A, cl. (*k*); The Interpretaion Act, R.S.O. c. 1, s. 28, cl. (*c*); In re Fowler and Nelson (1914), 6 O.W.N. 409.

Filing copy of award.

(2) A copy of the award shall be filed with the clerk of every municipality interested. 3-4 Geo. V. c. 43, s. 341.

Particulars of claim to be delivered.

342.—(1) In the case of a claim for compensation for damages for injuriously affecting land, the claimant, before the taking of evidence is begun, shall deliver to the corporation, and file with the arbitrators, particulars of his claim.

Amendment of claim.

(2) The arbitrators shall have the same power to amend the claim or the particulars as a Court would have in an action. 3-4 Geo. V. c. 43, s. 342.

343. Where the arbitration is as to compensation, the arbitrators, in their discretion, may refuse to hear further evidence of a cumulative character upon any matter or question. 3-4 Geo. V. c. 43, s. 343.

Limit of cumulative evidence.

344.—(1) The arbitrators may award a fixed sum for costs or may award costs on the scale of the Supreme Court, or of the County Court, in which case they shall be taxed by the proper officer of the Court in the county or district in which the first meeting of the arbitrators was held, without any further order, and the amount shall be payable within one week after it is finally determined.

Costs.

The arbitrators have power to direct by whom the costs are to be paid: In re Scott (1908), 12 O.W.R. 1162.

The discretion of the arbitrators may be exercised by disallowing costs to the landowner: In re Hislop and Stratford (1915), 34 O.L.R. 97, 23 D.L.R. 753.

(2) The taxation except where the costs are taxed by one of the taxing officers of the Supreme Court, shall be subject to revision by one of them, upon one week's notice, and such revision shall be subject to appeal, as in the case of an appeal from a taxation of costs in an action. 3-4 Geo. V. c. 43, s. 344.

Taxation of costs.

345.—(1) An appeal shall lie from every award in like manner as an appeal lies under *The Arbitration Act*, where the submission provides for an appeal from the award.

When an appeal lies from an award.
Rev. Stat. c. 65.

Section 17 of The Arbitration Act provides that:—

"17. (1) Where it is agreed by the terms of the submission that there may be an appeal from the award, the reference shall be conducted and an appeal shall lie to a Judge of the Supreme Court and to a Divisional Court in the same manner, and subject to the same restrictions, as in the case of a reference under an order of the Court.

"(2) The evidence of the witnesses examined upon such reference shall be taken down in writing, and shall, at the request of either party, be transmitted by the arbitrator or umpire, as the case may be, together with the exhibits, to the Central Office at Osgoode Hall.

"(3) Where the arbitrators proceed wholly or partly on a view or any knowledge or skill possessed by themselves or any of them, they shall also put in writing a statement thereof sufficiently full to enable a judgment to be formed of the weight which should be attached thereto."

The provision as to appeals in case of references is contained in s. 67 of The Judicature Act, R.S.O. c. 56, which provides that:—

"The Referee shall make his findings and embody his conclusions in the form of a report, and his report shall be subject to all the incidents of a report of a Master on a reference as regards filing, confirmation, appealing therefrom, motions thereupon and otherwise, including appeals to a Divisional Court."

Consolidated Rule 503 provides that:—

"An appeal from the report or certificate of a Master or Referee shall be to the Court upon seven clear days' notice and shall be returnable within one month from the date of service of notice of filing of the report or certificate."

The period, within which an application to set aside an award is to be made, runs from the publication to the parties of the award: In re Burnett and Durham (1899), 31 O.R. 262.

Where the parties agree that the reference shall include matters not within the scope of an arbitration as to compensation, and the award does not enable it to be ascertained what was awarded as compensation, unless the agreement provides for an appeal, an appeal does not lie: In re Field-Marshall and Beamsville (1906), 11 O.L.R. 472.

Where a municipal corporation, for the purpose of extending its waterworks, expropriated land, this section applies: In re Herriman and Owen Sound (1910), 1 O.W.N. 759, 16 O.W.R. 98.

It is proper that, when there is an appeal from the award, the arbitrators should state for the opinion of the Court how they dealt with the claims made and the reasons on which the award is based: James Bay Railway Company v. Armstrong (1909), A.C. 624, 631, 26 T.L.R. 1; In re Peterborough and Peterborough Electric Light Company (1915), 8 O.W.N. 564; In re Clarkson and Campbellford Lake Erie and Western Railway Company (1916), 35 O.L.R. 345, 6, 26 D.L.R. 782.

In In re Parsons and Eastnor (1915), 34 O.L.R. 110, 23 D.L.R. 790, it was held, on a full review of the authorities, that where error in law is shown by the reasons given by the arbitrator in a memorandum accompanying his award, the award should be set aside.

Where arbitrators have taken a view of a property and do not, as required by s. 17 (3) of The Arbitration Act, R.S.O. c. 65, state in their award whether or not they have proceeded upon anything learned upon the view, it is proper to refer back to the arbitrators, in order that they may certify in accordance with the provisions of the Act: In re Myerscough and Lake Erie and Northern Railway Company (1913), 4 O.W.N. 1249, 11 D.L.R. 458, 15 Can. Ry. Cas. 168, 24 O.W.R. 535; In re Watson and Toronto (supra).

The effect of The Municipal Act, s. 306, is to make the award final, except where there has been misconduct on the part of the arbitrators or they have assessed the compensation on a wrong basis: In re Laursen and South Vancouver (1913), 14 D.L.R. 241, 25 W.L.R. 431 (B.C.).

Rulings on points of law can be reviewed only on a case stated by the arbitrators made before the award: Ib.

There is no appeal from an award made under the expropriation clauses of The City Act, s. 253 (Sask.): Yager v. Swift Current (1915), 22 D.L.R. 801, 34 W.L.R. 1213, 7 W.W.R. 978 (Sask.).

In In re Sweinsson and Charleswood (1916), 31 D.L.R. 203, 35 W.L.R. 293 (Man.), where the failure to move against the award in time was due solely to the mistake of the solicitor and counsel of the corporation as to the time within which the motion must be launched, an extension of the time for moving was refused.

In Swift Current v. Leslie (1916), 9 S.L.R. 19, it was held that the practice and procedure to be followed in Saskatchewan for setting aside an award is the practice and procedure as it was in England on January 1st, 1898, and that the jurisdiction of the Court is to be exercised according to that practice and procedure. It is not proper to bring an action to set aside an award, but the proceeding should be my motion under The Arbitration Act.

(2) Subsection 1 shall not apply where the submission is in writing, and it is not agreed by the terms of it that there may be an appeal from the award.

Power of Supreme Court on appeal.

(3) On an appeal from an award the Supreme Court may call for and receive additional evidence to be taken in such manner as the Court directs, and may set aside the award or remit the matters referred or any of them, from time to time, for re-consideration and determination by the arbitrators, or may refer such matters or any of them to any other person, and may fix the time within which the further or new award shall be made, or may increase or diminish the amount awarded, or otherwise modify the award, as may be deemed just, and a Divisional Court shall have the like power and authority. 3-4 Geo. V. c. 43, s. 345.

It is very difficult, in view of the decisions of the Supreme Court of Canada in cases arising under The Railway Act, R.S.C. c. 37, to express an opinion as to the effect of this provision.

These cases seem to show that practically there is no appeal from the decision of the arbitrators upon questions as to the amount allowed as compensation (the *quantum*) unless they have adopted a wrong basis or perhaps where the amount allowed is so great or so small as to shock the conscience, especially where the arbitrators have viewed the property and acted wholly or partly upon the effect of it on their minds.

It would seem that in these cases the Court has taken a narrower view of its functions than is taken by the Judicial Committee of the Privy Council, for, in dealing with the case of an appeal from an award of compensation under The Railway Act, in Atlantic and North-West Railway Company v. Wood, L.R. (1895) A.C. 257, 11 T.L.R. 257, Lord Shand said:—

"The Court dealt with the award as one which it was their province to review on the facts as appearing on the evidence adduced before the arbitrators, and, in so doing, in the opinion of their Lordships, they acted rightly and in accordance with the statute. It would be a strained and unreasonable reading of the words of the statute 'as in a case of original jurisdiction' to hold that the evidence was to be taken up and considered as if it had been adduced before the Court itself in the first instance, and not before the arbitrators, and entirely to disregard the judgment of the arbitrators and the reasoning in support of it. Such a reading of the statute would really make the Court the arbitrators and the sole arbitrators in every arbitration in which an appeal on questions of fact was brought against an arbitrator's award. It appears to their Lordships that this was not the intention of the legislature, and that what was intended by the statute was not that the Court should thus entirely supersede and take the place of the arbitrators, but that they should examine into the justice of the award given by them on its merits, on the facts as well as the law. Previously to this enactment the Court had power only to approve of or set aside the award of arbitrators. This might often cause much expense and inconvenience in renewed proceedings before the arbitrators, and the purpose of the legislature seems to have been to enable the Court to avoid this, by giving power to make, or, rather, to reform, the award by correcting any erroneous view which the arbitrators might have taken of the evidence; that, in short, they should review the judgment of the arbitrators as they would that of a subordinate court, in a case of original jurisdiction, where review is provided for": pp. 262-3.

The cases to which reference has been made are:—

In re Canadian Northern Railway Company and Ketcheson (1913), 29 O.L.R. 339, 13 D.L.R. 854, 32 D.L.R. 629 (Sup. C. Can.).

In re Canadian Northern Railway Company and H. B. Billings (1913), 29 O.L.R. 608, 15 D.L.R. 918, 16 Can. Ry. Cas. 375, 32 D.L.R. 351 (Sup. C. Can.).

In re Canadian Northern Railway Company and C. M. Billings (1914), 31 O.L.R. 329, 19 D.L.R. 841, 19 Can. Ry. Cas. 193, 31 D.L.R. 687 (Sup. C. Can.).

In re Lake Erie and Northern Railway Company and Brantford Golf and Country Club (1914), 32 O.L.R. 141, 32 D.L.R. 219 (Sup. C. Can.).

In re Lake Erie and Northern Railway Company and Muir (1914), 32 O.L.R. 150, 20 D.L.R. 687, 32 D.L.R. 252 (Sup. C. Can.).

The decisions of the Supreme Court of Canada in these cases have not been (unfortunately perhaps) reported in the reports of that Court.

The question of how far, if at all, these cases are to be applied to appeals under this section has not been dealt with in any reported case except In re Watson and Toronto (supra), in which case Masten, J., said (p. 118), that, in his opinion, the principles laid down in these cases "apply at least as strongly, and perhaps more strongly, to an appeal under the Act respecting Municipal Arbitrations" (R.S.O. c. 199), and the Chief Justice of the Common Pleas said, "No Court would be justified in giving effect to the arbitrator's judgment without exercising its own judgment on all points involved in the case. No Court could be justified in failing to hear the case as carefully and fully as if it were being heard for the first time; but that in no way prevented or is inconsistent with giving due weight to any advantages the arbitrator may have had over those which the Court may have in coming to a right conclusion, nor from declining to interfere with the award unless well convinced of some error in it."

Arbitrators to file certificate showing time occupied and fees charged.

346.—(1) Each of the arbitrators shall file with the clerk of the municipality a certificate, showing the number of hours actually occupied by him in the reference, the number of hours occupied at each sitting, and the date of and the fees charged by him for each sitting.

Payment of arbitrators' fees on taking up award.

(2) Any party to the reference may pay to the Clerk of the County or District Court of the county or district in which the first meeting of the arbitrators was held, the fees demanded by the arbitrators, together with $10 as security for the costs of the taxation of such fees, and the clerk shall give a receipt in duplicate for the same, and shall enter the payment in a book to be kept by him for the purpose, and he shall be entitled to receive to his own use from such party, when the sum paid does not exceed $50, a fee of fifty cents, and when the sum paid exceeds $50 a fee of $1, and upon production and delivery of one of the duplicates the arbitrators shall deliver the award to the person producing the duplicate. 3-4 Geo. V. c. 43, s. 346.

Award not to be binding in certain cases unless adopted by by-law.

347.—(1) Where the arbitration is as to compensation, if the expropriating by-law did not authorize or profess to authorize any entry on or use to be made of the land before the award, except for the purpose of survey, or if the by-law gave or professed to give such authority, but the arbitrators by their award find that it was not acted upon, the award shall not be binding on the corporation, unless it is adopted by by-law, within three months after the making of the award [or after the determination of any appeal therefrom], and if it is not so adopted, the expropriating by-law shall be deemed to be repealed, and the corporation shall pay the costs between solicitor and client of the reference and award, and shall also pay to the owner the damages, if any, sustained by him in consequence of the passing of the by-law, and such damages if not mutually agreed upon shall be determined by arbitration [and if the by-law has been registered or a caution in respect of it has been filed the corporation shall forthwith cause a certificate signed by the mayor and clerk and sealed with the corporation's seal, stating that the by-law stands repealed, to be registered in the proper registry office, or the caution to be removed as the case may be]. 3-4 Geo. V. c. 43, s. 347; 7 Geo. V. c. 42, ss. 6, 7.

The words in brackets were added by 7 Geo. V. c. 42, ss. 6, 7.

Power to repeal by-law before award.

(2) Subject to the provisions of subsection 3, where the expropriating by-law did not authorize or profess to authorize any entry on or use to be made of the land except for the purpose of survey, or if the by-law gave or professed to give such authority but it has not been acted on, the council may at any time before the making of the award, and whether or not arbitration proceedings have been begun, repeal the by-law and if that is done the repealing by-law shall, if the expropriating by-law has been registered, be forthwith registered by the corporation in the proper registry office or if the land is under *The Land Titles Act* and a caution has been filed, the corporation shall forthwith remove the caution and the costs and damages mentioned in subsection 1 shall be paid by the corporation as therein provided.

(3) Subsection 2 shall not in any way affect or apply to the rights of any person under an award heretofore made. 7 Geo. V. c. 42, s. 8.

Before this section was amended by the provision as to paying damages, a corporation was not liable for such damages.

A by-law repealing an expropriation by-law may be passed without waiting for the completion of the award and the lapse of the three months.

Grimshaw v. Toronto (1913), 28 O.L.R. 512, 13 D.L.R. 247, following In re McColl and Toronto (1894), 21 A.R. 256.

The same ruling as in Grimshaw v. Toronto (supra) was made in Guest v. Hamilton (1913), 5 O.W.N. 310, 25 O.W.R. 274, (1914) 5 O.W.N. 889, although the officers of the corporation had gone upon the land and constructed a small ditch. This, it was held, might give a cause of action, but, as the expropriating by-law "did not authorize or profess to authorize any entry or use to be made of the property before the award has been made," the council had the right to repeal it.

A by-law passed for expropriating land for the purpose of opening a street cannot be repealed as to a portion of the land included, when the by-law authorizes entry upon the land and the raising of the money required to pay for it has been provided for by a by-law which has received the assent of the electors and has been registered: In re Usher and North Toronto (1911), 2 O.W.N. 851.

Where it is not alleged that the financial limit will be overrun, a landowner is entitled to judgment for the amount awarded to him under c. 20 of the British Columbia Statutes of 1873, and c. 64 of the British Columbia Statutes of 1892, as compensation for land taken possession of by the corporation notwithstanding that the corporation proposed to abandon the arbitration and take a smaller quantity of land, the corporation not being entitled to withdraw where land has been once expropriated and taken possession of: Davie v. Victoria (1912), 17 B.C.R. 102, 2 D.L.R. 287, 20 W.L.R. 544, 1 W.W.R. 1021, distinguishing Reg. v. Commissioners of the Woods, etc. (1850), 19 L.J.Q.B. 497.

The right which the landowner has, on default in the payment of the compensation, to resume possession, in which case all his rights revive, is intended only as an additional safeguard to secure payment of the compensation awarded, and is not the exclusive remedy available to him: Ib.

A municipal corporation upon which a statutory duty to enlarge and extend a street rests is responsible for loss of rent of an immovable, a part of which was to be expropriated, caused by the delay and refusal of the corporation to execute the work, notwithstanding that it had been ordered by a peremptory writ of mandamus to fulfil its obligation and had paid the penalty incurred by failure to comply with the writ.

In arriving at the amount of the damages, the proper method is to compare the rents received after the reduction with those produced by the immovable before the works were ordered, and not to take the revenue which, according to its value, it should have produced and deduct from it the rents received during the reduction.

Montreal v. Gauthier (1897), Q.R. 7 Q.B. 100.

A municipal corporation is not liable for damages caused by its failure to expropriate land, the expropriation of which has been authorized by statute, but is liable in law for damages caused by failure to proceed with expropriation proceedings commenced under the statutory authority: Guerin v. Montreal (1899), 2 Que. P.R. 159.

Where a corporation commenced expropriation proceedings and forthwith took possession of land, constructed works on it, and incorporated it with a public street, but subsequently, under the authority of a statute, giving permission to do so, abandoned the expropriation proceedings without paying indemnity or returning the land, the landowner is entitled to have his land returned to him in the state in which it was at the time it was taken possession of and to compensation for the illegal detention of it. The measure of the damages as representing the rents, issues and profits of the land should be the interest upon the value of it during the period of its illegal detention: Montreal v. Hogan (1899), Q.R. 8 Q.B. 534, (1900) 31 S.C.R. 1.

Where, under statutory authority to extend a street, a servitude for public utility is established on private land, which is not expropriated and the extension is subsequently abandoned, the owner of the land is not, in the absence of any statutory authority therefor, entitled to damages for the loss of proprietary rights while the servitude existed: Hollester v. Montreal (1899), 29 S.C.R. 402.

A petition for expropriation is not an offer to purchase land, but an institution of a real action, which may be begun and carried on without the owner's consent. A municipal council has, therefore, an absolute right to discontinue its proceedings for expropriation so long as the award is not delivered: Montreal v. Lafontaine Park (1909), 11 Que. P.R. 170.

An owner put *en demeure* by notice from a municipal corporation that it intends to expropriate his immovable, and who is thereby prevented from renting it, has the right to recover, as indemnity for a partial expropriation, the damages incurred by loss of tenants and an unnecessary removal even when the notice has not been followed up: Paquet v. Montreal (1913), Q.R. 22 K.B. 353.

In Quebec, if a municipal corporation gives notice of expropriation to a landowner and afterwards abandons the proceedings to expropriate, it is answerable to him for the loss sustained by his being deprived of the use of his property as the result of the imminence of the expropriation, *e.g.*, for the loss of rentals while the property, because of it ,was lying idle: Robillard v. Montreal (1913), 13 D.L.R. 680.

According to the civil law, damages resulting from the imminence of the expropriation, such as the fact that the property becomes useless, the near ejectment of the tenants, the difficulty of obtaining new ones, the advantageous sale of the property, the loss of customers, the moving expenses of the owner, must be taken into account: Picard on Expropriation, p. 117.

Where expropriation proceedings have been commenced and before the indemnity to be paid has been ascertained the proceedings are abandoned, no special damage having been sustained by the landowner, who has had unlimited user of the land, in assessing the amount to be paid as compensation to him there can be no allowance for interest either upon the estimated value of the land or upon the amount tendered for it by the expropriating body, but the landowner "is entitled to be fully indemnified for" his "costs as between solicitor and client and for all legitimate and reasonable charges and disbursements made in consequence of the proceedings which have been taken": per Cassels, J., in Quebec Jacques-Cartier Electric Company v. Rex, reported in appeal (1915) 51 S.C.R. 594, 24 D.L.R. 424.

This was a case of an expropriation under The Expropriation Act, R.S.C. c. 143.

Gibb v. Rex (1914), 15 Ex. C.R. 157, (1915) 52 S.C.R. 402, 27 D.L.R. 262, was a case in which the surrounding properties had been temporarily enhanced in value by reason of a projected government work subsequently abandoned, and it was held that the owner of property, no part of which had been taken, had no claim to compensation because of the abandonment of the proposed scheme, but that, on the other hand, where property has been taken and returned, all damages arising out of any interference with the owner's right in respect of it during the period in which the espropriation was effective is a proper subject of compensation.

Where expropriation proceedings are abandoned and the landowner has not been disturbed in his possession and no loss has been sustained by him between the time of the taking and of the abandonment, even nominal damages will not be allowed, but the landowner is entitled to his costs of and incidental to making his defence to the information, to be taxed between solicitor and client, including all legitimate and reasonable charges and disbursements: Rex v. Frontenac Gas Company (1915), 15 Ex. C.R. 438, 51 S.C.R. 594, 24 D.L.R. 424.

Yager v. Swift Current (1916), 30 D.L.R. 564 (Sask.). Where all that was done by the council was to pass a resolution authorizing proceedings for expropriation to be taken and to give notice to the landowner of the intention to expropriate, no action lies upon an award for compensation unless or until it has been adopted, as provided by Rev. Stat. c. 84, s. 258.

PART XVII.

ACTIONS BY AND AGAINST MUNICIPAL CORPORATIONS.

There is no section under which miscellaneous cases as to the liability of municipal corporations to actions and their right to maintain actions; as to the right to the remedy by mandamus, or as to the right of ratepayers to maintain actions, can appropriately be noted, and it has been thought most convenient to note them under this general heading.

ACTIONS BY CORPORATIONS.

A municipal corporation may maintain an action to restrain the obstruction of a public highway.

Fenelon Falls v. The Victoria Railway Company (1881), 29 Grant 4.

St. Vincent v. Greenfield (1887), 15 A.R. 567.

Toronto v. Lorsch (1893), 24 O.R. 227, 229.

Gloucester v. Canada Atlantic Railway Company (1902), 3 O.L.R. 85, 91, (1902) 4 O.L.R. 262.

The principle of Fenelon Falls v. The Victoria Railway Company was applied in Barton v. Hamilton (1889), 18 O.R. 199, 204, in which the defendant corporation was restrained from constructing a sewer in an adjoining municipality.

The rule that there is no contribution between wrongdoers has not been qualified to the extent of entitling one who is himself a wilful or negligent wrongdoer to indemnity from another involved with him in causing the injury or wrong in respect of which judgment has gone against them: Sutton v. Dundas (1908), 17 O.L.R. 556.

Where an Act provides that if any person shall lay a pipe or main to communicate with any pipe or main of the waterworks or in any way obtain or use any water thereof without the assent of the commissioners, he shall forfeit and pay to them for waterworks purposes fifty dollars ($50) and a further sum of five dollars ($5) for each day or part of a day or night or part of a night during which the pipe or main shall so remain, to be recoverable by civil action in any Court in the province having civil jurisdiction to the amount, this is the only remedy for the unlawful acts of taking water or maintaining pipes in contravention of the statute: Guelph v. Guelph Paving Company (1903), 2 O.W.R. 587.

In Lambert v. Toronto (1916), 9 O.W.N. 452, 36 O.L.R. 269, 29 D.L.R. 56, affirmed (1916), 54 S.C.R. 200, the corporation claimed indemnity under an agreement, but it was refused, because the jury had found that the injury complained of was caused by the negligence of the corporation.

There is an implied obligation upon the holder of a franchise from a municipal corporation to render and supply to each inhabitant of the municipality such services and commodities as the franchise was granted for on request and without unfair discrimination, provided the inhabitant is ready and willing to pay in advance therefor and the place at which the obligation is required to be performed lies within the sphere of the franchise holder's operations, and provided he accords to the franchise holder all reasonable facilities to admit of the convenient performance by the franchise holder of its obligations, and the corporation is entitled to obtain a mandamus to compel the holder of the franchise to perform the obligations of it as to the supply to the inhabitants of such services and commodities as the franchise was granted for: Red Deer v. Western General Electric Company (1910), 3 A.L.R. 145, 14 W.L.R. 657.

In Delta v. Vancouver Victoria and Eastern Railway and Navigation Company (1908), 14 B.C.R. 83, 9 W.L.R. 236, 467, 8 Can. Ry. Cas. 362, affirmed (1909) 11 W.L.R. 208, it was held that a municipal corporation is not entitled to bring an action to redress the public wrong done by obstructing a highway.

That case was followed in Hope v. Surrey (1914), 20 B.C.R. 434, 20 D.L.R. 540, 29 W.L.R. 525, 7 W.W.R. 175, in which it was said by Clement, J., that a municipal corporation cannot undertake to abate a nuisance by obstructing a highway *vi et armis*.

It was held in Oak Bay v. Gardner (1914), 19 B.C.R. 391, 17 D.L.R. 802, 27 W.L.R. 960, 6 W.W.R. 1023, that a municipal corporation cannot maintain an action except as relator on an information by the Attorney-General for a mandatory injunction where a person neglects to perform a duty to the public under a municipal by-law, and thereby creates a public nuisance, and Attorney-General v. Campbell (1872), 19 Grant 299, was referred to as a precedent for bringing the action in the name of the Attorney-General. In that case the defendant, who had been twice fined for an infraction of the by-law, persisted in building in violation of it, and an application was made for an injunction. Strong, V.-C., expressed a doubt as to whether the infraction of a municipal by-law constituted a nuisance.

St. John v. Barker (1906), 2 E.L.R. 20 (N.B.), in which it was held that a municipal corporation which owns lots bordering on a river is entitled to have enjoined the pollution of the waters of the river, which flow into a reservoir constructed by the corporation under statutory authority for the purpose of its waterworks system.

Ste. Agathe des Monts v. Reid (1903), Q.R. 24 S.C. 461, in which it was held that a municipal corporation may proceed by injunction against a person who, in violation of a by-law of its council, erects a steam mill within the limits of the municipality.

A person who agrees to furnish land to a corporation for a road cannot plead, in answer to an action for the specific performance of the agreement, that the *proces-verbal* of the municipal inspector is null and has been set aside by the Court, that the county council have not been advised on the subject of the opening of the road, and that he has taken a possessory action against the corporation: Ste. Julie v. Malo (1903), 5 Que. P.R. 217.

Rights acquired under a statute can be revoked only for the reasons stated in the statute as being grounds for revocation, and not for the violation of rights acquired by parties by subsequent agreements subsidiary and accessory to the statute, *e.g.*, in the case of waterworks where the grounds for revocation are the violations of obligations entered into by the company with the corporation of the municipality in which its operations are carried on: St. Johns v. Malleur (1907), 4 E.L.R. 175 (Que.).

See also s. 501.

ACTIONS AGAINST CORPORATIONS.

Royal Insurance Company v. Montreal (1906), Q.R. 29 S.C. 161, in which it was held that license fees collected under the authority of a by-law which had been abrogated by the repeal of the Act under the authority of which the by-law was passed may be recovered from the corporation by action.

In McAuliffe v. Welland (1905), 6 O.W.R. 819, (1906) 8 O.W.R. 523, the defendant corporation was held liable for injuries sustained by a tug running upon sunken piles, which had been cut off below the water and left in a navigable river when a highway bridge was being constructed across the river.

A contract was entered into between the plaintiff and the defendant corporations by which the plaintiff corporation became bound to the other corporation to furnish it, during the period of twenty years, with the water which it required at a stipulated rate per 1,000 gallons, and to provide a hydrometer and to keep it in good order, under the supervision of the engineer of the plaintiff corporation.

An action was brought by the plaintiff corporation alleging that, in the course of the execution of this contract, the defendant corporation had taken away the hydrometer and replaced it by pipe connection between the two aqueducts, and in that way permitted the supplying waters from the aqueduct of the plaintiff corporation without any control of the quantity so drawn off, and that for six months prior to the institution of the action the plaintiff corporation had not received any compensation for the water it had furnished to the defendant corporation, and for these causes the plaintiff corporation claimed a rescission of the contract and damages. The defence was that, in the end of January, the hydrometer having been broken, the engineer of the defendant corporation arranged with the engineer of the plaintiff corporation, who was authorized by the chairman of the aqueduct committee to that end, that the hydrometer should be replaced by a ¾ inch connecting pipe, with valves, which should be opened only by the two engineers, and that the quantity of water furnished to the defendant corporation should be calculated on the basis of 25,000 gallons per day; that from the 1st to the 28th February the valves were opened as arranged on several occasions, and that the plaintiff corporation had sent its account for the water furnished charged for on the agreed basis; that the hydrometer having been replaced on the 10th March, it was again broken, and it was agreed between the two engineers that the previous arrangement should remain in force; that from 24th July to 31st August a certain quantity of water was taken for which an account was sent to the defendant corporation, and that from that time until the spring of 1915 the defendant corporation had not required any water and had not taken any; that on the 21st May, 1915, the defendant corporation had been by a letter of the engineer of the plaintiff corporation *mise en demeure* to replace the hydrometer, and that it had been replaced four days before the institution of the action.

The Court awarded damages to the plaintiff corporation, but dismissed its claim for the rescission of the contract.

The Court was of opinion that the arrangement made with the engineer of the plaintiff corporation, though sanctioned by the chairman of the aqueduct committee, not having been authorized by the corporation, was not binding on it; and that the state of things created by the acts of the defendant corporation constituted a violation of the contract in one of its essential stipulations; that even the plaintiff corporation could not sanction without amending the by-law which had authorized the contract, but that, as the defendant corporation had before the action replaced the hydrometer, it was not proper to rescind the contract.

Levis v. Bienville (1915), Q.R. 49 S.C. 156.

In Champion and White v. Vancouver (1916), 31 D.L.R. 22, it was held that an action did not lie to restrain the defendant corporation from erecting a sea wall which it was by statute authorized to erect, although the effect of constructing it would be to interfere with a private right of access to a wharf, and no compensation was provided for by the statute.

A municipal corporation which permits a cheese manufacturer to drain his factory into a watercourse established by *proces-verbal*, which abuts and traverses the land of a property owner, is responsible for the damages that he suffers from the bad odours from it, but he cannot demand a round sum for damages past, present and future, and is entitled only to his damages actual, certain, direct and immediate down to the date of the institution of the action: Sevigny v. St. David (1916), Q.R. 50 S.C. 291.

MANDAMUS.

One of the consequences of the creation of a body corporate is that it may sue and be sued: The Interpretation Act, R.S.O. c. 1, s. 27.

One of the remedies against a municipal corporation that is available is that of mandamus. It is the appropriate relief to compel the performance of a duty of a public nature, but not to enforce a contractual obligation:

Benson v. Paull (1856), 6 E. & B. 273, 106 R.R. 596; Norris v. Irish Land Company (1857), 8 E. & B. 511, 112 R.R. 673; Fotherby v. Metropolitan Railway Company, L.R. (1866) 2 C.P. 188, 195; In re London Huron and Bruce Railway Company and East Wawanosh (1875), 36 U.C.R. 93; In re North Simcoe Railway Company and Toronto, Ib. 101; Kingston v. Kingston Portsmouth and Cataraqui E.R. Company (1897), 28 O.R. 399, (1898) 25 A.R. 462. The prerogative writ is available where there is no other remedy: Bush v. Beavan (1862), 1 H. & C. 500, 130 R.R. 624, 32 L.J. Ex. 54, but a mandamus may be granted under The Judicature Act, R.S.O. c. 56, s. 17, to enforce a statutory duty where the person claiming the mandamus has the right to have the duty performed and is personally interested in it and there is no other adequate remedy: Fotherby v. Metropolitan Railway Company (supra); Morgan v. Metropolitan Railway Company, L.R. (1868), 4 C.P. 97.

The prerogative writ of mandamus is not obtainable by action, but only by motion: Kingston v. Kingston Portsmouth and Cataraqui E.R. Company (supra); Smith v. Chorley District Council (1897), 1 Q.B. 532, 678, 13 T.L.R. 327, followed in Reg. v. Mayor, etc., of Eastbourne (1900), 16 T.L.R. 546, 83 L.T.N.S. 338, 64 J.P. 724.

A mandamus will not be granted for the performance of a long series of continual acts involving personal service and extending over an indefinite period: Kingston v. Kingston Portsmouth and Cataraqui E.R. Company (supra); Bickford v. Chatham (1889), 16 S.C.R. 235; nor will it be granted to compel the opening for travel of an original road allowance: Hislop v. McGillivray (1888), 15 A.R. 687, (1890) 17 S.C.R. 479, nor to enforce a general duty to repair a highway, as to which see cases noted under s. 460 (1).

See also Toronto Public Library Board v. Toronto (1900), 19 P.R. 329; Peterborough v. Grand Trunk Railway Company (1900), 32 O.R. 154, (1901) 1 O.L.R. 144; Pettigrew v. Baillarge and Quebec (1901), Q.R. 20 S.C. 173; In re Rex v. Meehan (1902), 3 O.L.R. 567; In re Denison, Rex v. Case (1903), 6 O.L.R. 104; Hanley v. Toronto, Hamilton and Buffalo Railway Company (1905), 11 O.L.R. 91; Rex v. Campbell (1905), 10 Can. Cr. Cas. 326 (Yukon Terr.); Hull v. Gatineau Macadamized and Gravelled Road Company (1906), Q.R. 29 S.C. 354; Nelles v. Windsor, Essex and Lake Shore Rapid Railway Company (1908), 16 O.L.R. 359; Rich v. Melancthon Board of Health (1912), 26 O.L.R. 48, 2 D.L.R. 866.

The following cases, in addition to those noted under various sections may also be referred to:—

ONTARIO.

In re West Nissouri Continuation School (1912), 25 O.L.R. 550, 1 D.L.R. 252, in which it was held that a formal demand and refusal is not necessary to entitle an applicant to a mandamus; all that is necessary, in order that a mandamus may issue, is to satisfy the Court that the party complained of has distinctly determined not to do what is demanded.

The same conclusion was reached in In re West Nissouri Continuation School (1916), 38 O.L.R. 207.

In re Ottawa and the Provincial Board of Health (1914), 33 O.L.R. 1, 20 D.L.R. 531, in which it was held that a provincial Board of Health, which has power to withhold its approval from plans and specifications for a system of municipal water supply, is not justified in refusing its approval because it does not approve of the scheme of bringing the water from the source from which it is proposed to bring it.

It was also held that the board, under The Public Health Act, R.S.O. c. 218, and under a special Act, was not to be regarded as a mere emanation from the Crown, but as a body created for the discharge of important administrative and quasi-judicial functions—a public authority performing a statutory duty, and was subject to have its action controlled by mandamus.

Where a municipal corporation fails to obey a mandatory order of the Court, the members of the council may properly be punished for the contempt: In re Bolton and Wentworth (1911), 23 O.L.R. 390.

The members of a township council were ordered to indemnify the corporation against all its costs between solicitor and client and all the costs it was obliged to pay in consequence of the council's disobeying an order of the Court (a mandamus): In re West Nissouri Continuation School (1917), 38 O.L.R. 207.

British Columbia.

Reg. v. Mission (1900), 7 B.C.R. 513, noted under s. 336.

Moffet v. Ruttan (1911), 16 B.C.R. 342, in which it was held, following Reg. v. Eastbourne Corporation (1900), 83 L.T.N.S. 338, 64 J.P. 724, 16 T.L.R. 546, that a mandamus will not be granted to compel the mayor of a municipality to approve a plan of a subdivision where he has refused to sanction it on the ground that the subdivision does not comply with the law, and has not exercised unreasonably the discretion which he has under the statute.

In re Walker and South Vancouver (1913), 18 B.C.R. 480, 14 D.L.R. 446, 25 W.L.R. 824, 5 W.W.R. 389, noted under s. 336.

Manitoba.

Noble v. Turtle Mountain (1905), 15 Man. L.R. 514, 2 W.L.R. 144, in which it was held that a mandamus to replace a bridge on a public highway, which has been carried away by a flood, should not be granted, as there is another adequate remedy—by indictment.

Holmes v. Brown (1908), 18 Man. L.R. 48, 8 W.L.R. 459, in which it was held that one who has a valid legal claim against a municipal corporation is not entitled to a mandamus to compel the mayor to sign a cheque for the amount of the claim, although the council has passed a resolution approving payment over the mayor's veto, because the claimant has another adequate remedy, namely, to proceed by action against the corporation.

Frankel v. Winnipeg (1913), 23 Man. L.R. 296, 8 D.L.R. 219, 22 W.L.R. 597, 3 W.W.R. 405, in which a mandamus to a building inspector to issue a building permit was refused, and the opinion was expressed by Galt, J., that what was sought to be enforced was a mere private right.

New Brunswick.

A municipal council whose duty it was, upon complaint and a demand of investigation as to the propriety of the return of the mayor, to assemble and determine the matter, and which had refused to do so upon the ground that a proper complaint and demand of investigation had not been made, was required by mandamus to proceed with the investigation, the Court being of opinion that a sufficient complaint and demand of investigation had been made: In re Farrell (1914), 42 N.B. 478.

Nova Scotia.

Rex v. Halifax (1915), 49 N.S. 289, 25 D.L.R. 113. A municipal corporation may be compelled by mandamus to restore one to the office of assessor who has been dismissed without personal notice of the council meeting called to consider his dismissal.

Quebec.

Page v. Longueuil (1897), Q.R. 7 Q.B. 262, in which it was held that the performance by a municipal corporation of an agreement made with persons who conveyed lands to it that the corporation would maintain them as public streets, which the corporation would open and extend to a named point as they were built upon, being a simple contractual obligation of a private nature will not be enforced by mandamus, more especially as there is an effectual remedy at common law, and because, under the charter of the municipality, the opening of new streets is entirely a matter of discretion.

The legal recourse for a municipal councillor who is deprived of his seat is by mandamus, and not by *quo warranto:* Gosselin v. St. Jean (1898), Q.R. 16 S.C. 449.

A cabman who claims that his license has been taken away unlawfully cannot obtain a mandamus against the corporation to compel it to re-issue the license: Laberge v. Montreal (1902), Q.R. 22 S.C. 473.

Perron v. Beloeil (1904), 6 Que. P.R. 408, in which it was held that a municipal corporation cannot be compelled by mandamus to take proceedings for the contravention of a by-law of its council when an interested ratepayer has the right to do so.

Gatineau Point v. Hull (1906), Q.R. 15 K.B. 354, in which it was held that recourse to the writ of mandamus to compel a municipal corporation to perform a legal duty is not open to another municipal corporation which is equally bound to the performance of the same obligation and is also in default, and, therefore, where two municipal corporations are under a duty to maintain in different proportions a bridge which connects their municipalities and is in need of repairs, the one cannot proceed against the other if it has not furnished its own share of the cost of maintenance.

Municipal Homes and Investment Corporation v. Legarê (1909), Q.R. 37 S.C. 417, in which it was held that a resolution of a municipal council authorizing the mayor and secretary to have an authenticated deed prepared and to sign it on behalf of the corporation is a simple mandate, and does not impose upon them an official duty pertaining to their functions of which third persons having an interest can demand the performance by mandamus.

Unless there is a special by-law requiring a municipal corporation to repair a road, a mandamus does not lie to compel it to repair either a front road or a by-road; Lichtenheim v. Pointe-Claire (1909), 11 Que. P.R. 89.

Farly v. Montreal (1910), Q.R. 39 S.C. 13, in which it was held that a mandamus does not lie to compel a municipal corporation to repair a part of a street more particularly where it appears that repairs to the street have been begun, if no wrong is shown calling for immediate redress and other and adequate remedies exist to cure the wrong complained of.

Actions by Ratepayers.

A plaintiff may sue without joining the Attorney-General where an interference with a public right involves interference with some private right of the plaintiff and where no private right of the plaintiff is interfered with, but he, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right: Boyce v. Paddington Borough Council, L.R. (1903) 1 Ch. 109.

An action will lie by a ratepayer alleging an illegal misapplication of the funds of the corporation, with which the council refuses to interfere: Paterson v. Bowes (1853), 4 Grant 170.

Where a municipal council illegally pays away money of the corporation to one of its officers, if the council refuses to allow its name to be used, an action to recover it back may be brought by a ratepayer suing on behalf of all the ratepayers, and need not be in the name of the Attorney-General: MacIlreith v. Hart (1908), 39 S.C.R. 657.

The same rules apply to actions to restrain threatened *ultra vires* acts of a municipal council, to actions to recover for the corporation money or property illegally misapplied, and to actions to restrain a threatened misapplication of them.

The following additional cases may be referred to:—

A ratepayer or an elector can demand the annulment of a by-law by a direct action only if he proves that it has caused or will cause him injury: Stuart v. Napierville (1916), Q.R. 50 S.C. 407.

Ontario.

Hope v. Hamilton Park Commissioners (1901), 1 O.L.R. 477, in which it was held that ratepayers affected by resolutions as to the management of a park, only to the same extent as all other ratepayers of the municipality, are not entitled to bring an action to set them aside, and that such an action must be brought by the Attorney-General.

Jarvis v. Fleming (1896), 27 O.R. 309, in which it was held that a municipal corporation may not contribute to the costs of carrying on an action brought by a ratepayer against a gas company operating in the municipality for the purpose of obtaining a reduction in the price of gas, and that the plaintiff, as a ratepayer, was entitled to an injunction to restrain the corporation from so doing.

Thompson v. Yarmouth (1902), 1 O.W.R. 556, in which it was held that a person interested only as a ratepayer cannot maintain an action against a municipal corporation to compel it to maintain and repair a bridge which it has agreed with him and other ratepayers to maintain.

Where a municipal corporation pays an unfounded claim, the payment is illegal, and, notwithstanding that it was not made until after counsel, on an incomplete statement of facts, had advised that it was proper to make it, the amount paid may be recovered from the person to whom it was paid in an action by a ratepayer suing on behalf of himself and all other ratepayers: Patchell v. Raikes (1904), 7 O.L.R. 470.

In the same case it was said that a corporation may not refer to arbitration a question of law, though it may be that it may refer a question of fact: p. 479.

In this case the Court took a very narrow view as to the powers of municipal corporations and their councils, and its view as to the members of a council occupying the position of ordinary trustees was, in the light of subsequent cases, erroneous.

Abbott v. Trenton (1909), 1 O.W.N. 218, 14 O.W.R. 1101, noted under s. 322 (acquiring or expropriating any land).

Ward v. Owen Sound (1910), 1 O.W.N. 512, in which it was held that there is "no warrant for an action at law by a ratepayer who, without petition or application to the council and without knowing what, if any, action the council intends to take, finds some flaw in what the council has done," and seeks by his action to obtain a mandatory order requiring the council to submit to the electors a by-law for the repeal of a local option by-law.

Rochford v. Brown (1911), 25 O.L.R. 206, in which it was held that a tenant, in the absence of evidence that he is bound to pay the taxes on the leased premises, is not such a ratepayer as may bring a class action on behalf of the ratepayers of the municipality.

Wright v. Ottawa and Ottawa Dairy Company (1914), 7 O.W.N. 151, 19 D.L.R. 712, in which it was held that a ratepayer is not entitled to maintain an action to restrain a municipal corporation from paying the agreed consideration under an executed contract, although the contract was not formally entered into under the corporate seal.

See also Black v. Ellis (1906), 12 O.L.R. 403.

BRITISH COLUMBIA.

Anderson v. Victoria (1884), 1 B.C.R. Pt. II. 107, in which it was held that an individual, unless specially injured, cannot sue to restrain an improper use being made of land held by the corporation upon trust to lay out and maintain it as a public park or pleasure ground for the enjoyment and recreation of the inhabitants of the municipality.

Elworthy v. Victoria (1896), 5 B.C.R. 123, in which it was held that where a corporation proposes to expend money which has been appropriated by resolution to a work which it afterwards becomes unlawful to undertake, a ratepayer, suing on behalf of himself and all other ratepayers, is entitled to maintain an action to restrain the application of the money to any further construction of the work, and the Provincial Attorney-General is not a necessary party to the action, but the corporation and the members of the council responsible for the illegal action should be parties defendants.

Arbuthnot v. Victoria (1910), 15 B.C.R. 209, 14 W.L.R. 440, in which it was held that where a municipal council had passed a by-law for the construction of a macadam pavement on the local improvement plan and was not building a macadam road or performing the work in accordance with the report referred to in the by-law, but was doing it in a defective and unworkmanlike manner, an action by a ratepayer, suing on behalf of himself and all other ratepayers for a mandatory injunction, should not be dismissed on a summary application.

MANITOBA.

Shrimpton v. Winnipeg (1900), 13 Man. L.R. 211, in which it was held, following Smith v. Raleigh (1882), 3 O.R. 405, and Wallace v. Orangeville (1884), 5 O.R. 37, that a ratepayer may maintain an action to restrain a municipal corporation from acting upon a resolution for the expenditure of money in a case where the assent of the electors is necessary and it has not been obtained, and that it is not necessary that the action should be brought in the name of the Attorney-General.

Brock v. Robson (1914), 25 Man. L.R. 64, 19 D.L.R. 197, 29 W.L.R. 897, 7 W.W.R. 544, in which it was held that where a statute provides that a petition for the passing of a by-law shall be accompanied by an affidavit proving the signatures to it and setting forth the names of the petitioners, and the council is proceeding to submit a by-law for the assent of the electors without the petition having been thus verified, a license holder is entitled to maintain an action to restrain the submission of the by-law.

In a similar case, Stephenson v. Cowan (1914), 25 Man. L.R. 67, 20 D.L.R. 605, 30 W.L.R. 297, 7 W.W.R. 772, it was held that an elector and ratepayer who will not suffer special damage by reason of the by-law, if passed, is not entitled to have the proceedings enjoined.

New Brunswick.

Steeves v. Moncton (1914), 42 N.B. 465, 17 D.L.R. 560, 14 E.L.R. 321, in which it was held that where the Crown is not directly interested, a ratepayer has the right, on behalf of himself and the other ratepayers, to maintain an action against a municipal corporation to restrain *ultra vires* acts.

Nova Scotia.

Chipman v. Yarmouth (1913), 47 N.S. 257, 12 D.L.R. 415, in which a ratepayer was allowed to intervene and defend an action which the council refused to defend.

Corning v. Yarmouth (1913), 9 D.L.R. 277, 12 E.L.R. 208, affirmed 12 D.L.R. 683, 13 E.L.R. 78, in which a ratepayer was allowed to intervene and defend an action which the council refused to defend.

Prince Edward Island.

Tanton v. Charlottetown (1906), 1 E.L.R. 282, in which it was held that a ratepayer may not sue to restrain the misapplication by a municipal council of the funds of the corporation, but in MacIlreith v. Hart (supra) it was held, affirming (1907) 41 N.S. 351, 2 E.L.R. 468, which had reversed (1907) 2 E.L.R. 118, 158, that a ratepayer may sue on behalf of himself and of all other ratepayers where the council refuses to allow the name of the corporation to be used.

Quebec.

Samson v. Montreal (1903), Q.R. 23 S.C. 500, noted under s. 400, par. 5.

Robertson v. Montreal (1914), Q.R. 23 K.B. 338, (1915) 52 S.C.R. 30, 26 D.L.R. 228, in which it was held, Idington and Anglin, JJ., dissenting, that a shareholder in a street railway company, who is also a ratepayer, has no *locus standi* to attack the validity of an agreement of a municipal corporation granting to a company the exclusive privilege of operating autobus lines on certain streets of the municipality on the ground that such a privilege could not lawfully be granted, and that, if it might be granted, that could not be done except by means of a by-law, and that in any case a provision of the agreement by which the corporation was entitled to shares in the company was *ultra vires*.

This case was followed in Warner-Quinlan Asphalt Company v. Montreal (1915), Q.R. 25 K.B. 147, 27 D.L.R. 540, and it was there laid down that not merely the interest of a ratepayer, but a special and distinct interest, is required to entitle a person to demand that a contract awarded by a municipal corporation be cancelled unless it is established that the transaction is fraudulent or *ultra vires*, and that the interest of an unsuccessful bidder, to whom the contract would not be awarded if the one attacked were set aside, is not sufficient to entitle him to intervene.

Forest v. L'Assomption (1915), Q.R. 48 S.C. 151, noted under s. 249 (1), in which it was held that one of the ratepayers called upon to pay the cost of a bridge has an interest sufficient to entitle him to attack in nullity by direct action the proceedings both of the county and of the local corporation.

Pérodeau v. Richard (1915), Q.R. 48 S.C. 165, in which it was held that a ratepayer cannot contest the payment of an account by the secretary-treasurer of a municipal corporation because the account is not attested under oath according to the constant usage of the corporation.

TERRITORIES.

Pease v. Moosomin (1901), 5 Terr. L.R. 207, in which it was held that an action may be brought by a ratepayer, suing on behalf of himself and all other ratepayers, to restrain the unlawful application of the funds of the corporation and to have the money which has been unlawfully applied repaid, and that it is not necessary that an action for the latter purpose should be brought in the name of the corporation or of the Attorney-General.

Right of action of municipal corporation to enforce agreements, etc.

348. Where a duty, obligation, or liability is or has been heretofore imposed by statute upon any person in favour of a municipal corporation, or the inhabitants, or some of the inhabitants of a municipality, or where a contract or agreement is or has heretofore been entered into, which imposes such a duty, obligation, or liability, the corporation shall have the right by action to enforce it, and to obtain as complete and as full relief and remedy as could be obtained in an action by the Attorney-General, as plaintiff, or as plaintiff on the relation of any person interested, or in an action by such inhabitants or one or more of them, on his or their own behalf, or on behalf of himself or themselves and of such inhabitants. 3-4 Geo. V. c. 43, s. 348.

See also s. 501.

Corporation to be liable for acts done under illegal by-law.

349. An action shall not be brought for anything done under a by-law, order or resolution of a council which is invalid, in whole or in part, until one month after the by-law, order, or resolution, or so much of it as is invalid, has been quashed or repealed, and every such action shall be brought against the corporation alone, and not against any person acting under the by-law, order or resolution. 3-4 Geo. V. c. 43, s. 349.

The corresponding provision to this section in The Municipal Acts of other provinces is:—

Alberta, Rev. Stats. 1915, c. 2, s. 361, c. 3, s. 325.
British Columbia, Rev. Stats. 1911, c. 170, s. 212.
Manitoba, Rev. Stats. 1913, c. 133, s. 353.
Nova Scotia, Towns Incorporation Act, Rev. Stats. 1900, c. 71, s. 212 (1).
Saskatchewan, Stats. 1916, c. 16, ss. 524-5, c. 19, ss. 507-8, c. 20, ss. 241-2; Rev. Stats. 1909, c. 87, ss. 328-9.

The cases as to the effect of this section are conflicting, but the result of them appears to be that it applies only to actions brought for the recovery of damages: Connor v. Middagh (1889), 16 A.R. 356, 378, 388; Traves v. Nelson (1900), 7 B.C.R. 48, referred to *infra*.

It is settled law that the section does not apply where a by-law is advanced as a valid by-law to support a claim under it, and does not dispense with the necessity of the person claiming under it proving that all conditions precedent to the exercise of the power to pass the by-law were complied with, *e.g.*, in the case of a by-law to stop up a highway, that the prescribed notices of the intention to pass it were given.

See as to this Lafferty v. Stock (1853), 3 U.C.C.P. 1; Wannamaker v. Green (1886), 10 O.R. 457, followed in In re Rogers (1915), 7 O.W.N. 717, 22 D.L.R. 590.

It was said by Macaulay, C.J., that if a by-law is valid on its face, "all proceedings had under it . . . may be justified under it," and that a by-law which is illegal and void on the face of it, though it has not been quashed, may be so adjudged in a collateral proceeding, and it cannot be set up in justification of acts done under it: Barclay v. Darlington (1856), 5 U.C.C.P. 432, 438.

This statement is wide enough to cover the case of a by-law set up as a defence to an action for the recovery of damages for acts done under it, but the subsequent cases establish that that is not the law: Connor v. Middagh (supra), where the cases are considered.

The section does not apply to taking proceedings in replevin: Wilson v. Middlesex (1859), 18 U.C.R. 348, 352, though A. Wilson, J., in Haynes v. Copeland (1868), 18 U.C.C.P. 150, would seem to have been of a contrary opinion.

See also Lewis v. Teale (1871), 32 U.C.R. 108, an analogous case, in which it was held that notice of action was unnecessary in the case of replevin.

See as to presumption as to validity of by-laws, notes to s. 432 under that heading.

The section does not apply to prevent questioning the validity of a by-law on a motion to quash a conviction under it: Reg. v. Osler (1872), 32 U.C.R. 324; Reg. v. Belmont (1874), 35 U.C.R. 298; Reg. v. Johnston (1876), 38 U.C.R. 549; or in an action to restrain a breach of a by-law or an action to restrain the corporation from taking proceedings under it: Malott v. Mersea (1885), 9 O.R. 611; Alexander v. Howard (1887), 14 O.R. 22; Rose v. West Wawanosh (1890), 19 O.R. 294; Bannan v. Toronto (1892), 22 O.R. 274, 279 (though in that case the Chancellor seems to have limited the right to the case of a by-law invalid on its face); Smith v. Ancaster (1896), 27 O.R. 276, 23 A.R. 596; Petman v. Toronto (1897), 24 A.R. 53; or in an action to obtain a declaration that a by-law is invalid: Malott v. Mersea (supra); Pease v. Moosomin (1901), 5 Terr. L.R. 207; Gesman v. Regina (1909), 2 S.L.R. 50, 10 W.L.R. 136; Hall v. Moose Jaw (1910), 3 S.L.R. 22, 12 W.L.R. 693; or incidentally upon the trial of an action: Roberts v. Climie (1881), 46 U.C.R. 264.

In Dick v. Calgary (1914), 16 D.L.R. 415, 27 W.L.R. 678 (Alta.), it was held that, under the charter of the city of Calgary, which contains a provision (s. 123) similar to s. 349, and another section, 125, which provides that one month's notice in writing shall be a condition precedent to all suits and actions against the city from whatever cause they may arise, failure to give the notice was fatal to an action brought to restrain the corporation from purchasing land under the authority of a by-law, the validity of which was attacked, but had not been quashed.

In Traves v. Nelson (1900), 7 B.C.R. 48, it was held that ss. 91 and 92 of The Municipal Clauses Act, which are similar to this section, do not prevent an action from being brought to restrain a municipal corporation from proceeding under a by-law which has not been quashed, but only prevent an action for damages already suffered until the by-law is quashed, and that the validity of such a by-law may be determined in *certiorari* proceedings.

In Plested v. McLeod (1910), 3 S.L.R. 374, 15 W.L.R. 533, it was held that a constable, who arrests without warrant a person alleged to have been guilty of a contravention of a by-law which does not authorize an arrest, is not within the protection of a section similar to this.

In Pease v. Moosomin (1901), 5 Terr. L.R. 207, it was held that the provisions of a municipal ordinance similar to s. 283 were merely permissive, and that a section similar to s. 349 did not oust the jurisdiction of the Court to declare by-laws, orders or resolutions invalid, or to quash them on *certiorari*, and did not apply where the by-law, order or resolution is invalid on its face and the action is to enjoin proceedings under it.

PART XVIII.

RESPECTING THE ADMINISTRATION OF JUSTICE.

JUSTICES OF THE PEACE.

Certain persons to be ex-officio Justices of the Peace.

350. The head of every council, the reeve of every town, and every deputy reeve, after he has made the declarations of office and qualification, shall, *ex officio*, be a justice of the peace for the whole county, and every controller and alderman in a city, after he has made such declarations, shall be, *ex officio*, a justice of the peace for the city. 3-4 Geo. V. c. 43, s. 350.

Justice may act although member of council.

351. A justice of the peace shall not be disqualified from acting in the case of a prosecution for a breach of a by-law of a council,

(*a*) By reason of his being a member of the council; or

(*b*) Because the penalty or part of it goes to the corporation of a municipality of which he is a ratepayer. 3-4 Geo. V. c. 43, s. 351.

POLICE OFFICE IN CITIES AND TOWNS.

Police office.

352. The council of every city and town shall establish and maintain therein a police office. 3-4 Geo. V. c. 43, s. 352.

Police magistrate to attend daily.

353.—(1) The police magistrate, or, if he is absent or ill, or if there is a vacancy in the office, the deputy police magistrate, shall attend at the police office daily, for such period as may be necessary for the disposal of the business to be done.

Mayor to attend where no police magistrate.

(2) In a town for which there is not a police magistrate, the mayor shall attend at the police office daily, or at such time, and for such period as may be necessary for the disposal of the business that may be brought before him as a justice of the peace.

Case of illness or absence of police magistrate.

(3) In a city or town for which there is a police magistrate, if he is absent or ill, and there is no deputy police magistrate, or if the deputy police magistrate is also absent or ill, the mayor shall attend in the place of the police magistrate, but shall have only the powers of a justice of the peace.

When Justice may act.

(4) A justice of the peace having jurisdiction in a city or town may, at the request of the mayor, act in his stead.

Accommodation, etc., for police office.

(5) The council shall provide all necessary and proper accommodation, fuel, light, stationery and furniture for the police office, and for the officers connected with it.

Clerk of police office and his duties.

(6) The clerk of the council of the city or town, or such other person as the council appoints for that purpose, shall be the clerk of the police office, and shall perform the same duties and receive the same fees and emoluments as a clerk of a justice of the peace.

If paid by salary, fees to belong to corporation.

(7) Where the clerk of the council is paid by a salary, the fees and emoluments shall be paid over by him and belong to the corporation.

Clerk to be under control of magistrate.

(8) Where there is a police magistrate, the clerk of the police office shall be under his control. 3-4 Geo. V. c. 43, s. 353.

"Police Magistrate"—See The Police Magistrates Act, R.S.O. c, 88.

The Lieutenant-Governor has power under that Act to appoint a police magistrate for a town having a population of less than 5,000, situate in unorganized territory, where the appointment is made before a council for the town has been elected: Rex v. Reedy (1908), 18 O.L.R. 1.

BOARDS OF COMMISSIONERS OF POLICE AND POLICE FORCE IN CITIES AND TOWNS.

Constitution of Board.

354.—(1) Notwithstanding the provisions of any special Act, there shall be for every city, and there may be constituted by the council thereof for every town having a police magistrate, a Board of Commissioners of Police.

Who to be members.

(2) The Board shall consist of the mayor, a Judge of the County or District Court of the county or district in which the city or town is situate, and the police magistrate.

Designating Judge where more than one.

(3) If there are two or more Judges for the county or district, the Lieutenant-Governor in Council shall designate the Judge who is to be a member of the board.

Absence of police magistrate

(4) If the police magistrate is absent from Ontario, the deputy police magistrate shall act in his stead during his absence.

Vacancy in office of Judge or police magistrate.

(5) If the office of Judge or that of police magistrate is vacant, the council shall fill the vacancy on the board by appointing a resident of the municipality to act during the vacancy.

Illness or absence of mayor.

(6) In case of the illness or absence from Ontario of the mayor, or of the office being vacant, the person appointed as presiding officer of the council shall act instead of the mayor. 3-4 Geo. V. c. 43, s. 354 (1-6).

Remuneration of Judge, etc.

(7) The council of a city may provide for the payment of a reasonable remuneration for his services as a member of the board to the Judge, [or the Police Magistrate] or to any person appointed to fill the vacancy while the office of Judge or police magistrate is vacant. 3-4 Geo. V. c. 43, s. 354 (7); 7 Geo. V. c. 42, s. 9.

The words in brackets were added by 7 Geo. V. c. 42, s. 9.

Repeal of by-law constituting board.

(8) The by-law of the council of a town may at any time be repealed, and, if repealed, the board shall, on the first day of January next after the passing of the repealing by-law, be dissolved.

(9) Subsection 8 shall also apply to a board constituted before the 24th day of March, 1874, and existing on that day. 3-4 Geo. V. c. 43, s. 354 (8-9).

NOTE—*The following section, numbered* 354*a*, *for convenience only, was enacted by section* 24 *of The Statute Law Amendment Act, 1914. Although not enacted as an amendment to any particular Act, The Municipal Act would seem to be the proper place for it.*

354*a.*—(1) The council of every county having a police magistrate may by by-law constitute a Board of Commissioners of Police consisting of the warden, a Judge of the County Court and a police magistrate.

County board of police commissioners.

(2) If there are two or more Judges for the county or two or more police magistrates, the Lieutenant-Governor in Council shall designate which Judge or police magistrate is to be a member of the board.

Where there are two or more magistrates or Judges.

(3) If any person named as a member of the board is ill or absent from Ontario or if the office is vacant, the council may fill the vacancy on the board by appointing a resident of the municipality to act during the vacancy.

Filling vacancies.

(4) The by-law may at any time be repealed, and, if repealed, the board shall on the first day of January next after the passing of the repealing by-law be dissolved.

Repeal of by-law.

(5) Sections 355, 356, 357, 360, 361, 362 and 363 of *The Municipal Act* shall apply *mutatis mutandis* to the board, and the board shall have the powers which are by said sections conferred on Boards of Commissioners of Police in cities and towns. 4 Geo. V. c. 21, s. 24.

Application of Rev. Stat. c. 192, ss. 355-357, 360-363.

355.—(1) The board shall have the same power to summon and examine witnesses on oath as to any matter connected with the execution of its duties, to enforce their attendance, and to compel them to give evidence, as is vested in any Court of law in civil cases.

Board may examine witnesses on oath.

(2) It shall be the duty of every person served with a notice to attend before the board, signed by a member of it, to attend pursuant to the notice, and the notice shall have the same effect as a subpœna. 3-4 Geo. V. c. 43, s. 355.

Force of notice to attend before board.

356.—(1) The board shall, in each year, at its first meeting held after the mayor has made the declarations of office and qualification, elect a chairman.

Chairman.

Quorum.

(2) A majority of the members of the board shall constitute a quorum.

Meetings in cities to be open to public.

(3) The meetings of the board shall be open to the public, unless otherwise directed by the board. 3-4 Geo. V. c. 43, s. 356.

How by-law of board authenticated and proved.

357.—(1) A by-law of the board shall be sufficiently authenticated, if signed by its chairman or acting chairman, and a by-law purporting to be so signed shall be received in evidence in all Courts, without proof of the signature.

As to jurisdiction to quash by-laws of the board, see In re Major Hill Taxicab Company and Ottawa (1915), 33 O.L.R. 243, 21 D.L.R. 495, and In re Richardson and The Board of Commissioners of Police of Toronto (1876), 38 U.C.R. 621, noted under s. 283.

(2) A copy of a by-law purporting to be certified by a member of the board to be a true copy, shall be received in evidence in all Courts, without proof of the signature. 3-4 Geo. V. c. 43, s. 357.

HIGH BAILIFF AND POLICE FORCE.

High bailiffs.

358. The council of every city shall appoint a high bailiff, but may provide that the offices of high bailiff and chief constable shall be held by the same person. 3-4 Geo. V. c. 43, s. 358.

Police force in cities and towns.

359. The police force in cities and in towns having a Board of Commissioners of Police shall consist of a chief constable and as many constables and other officers and assistants as the council may deem necessary, but, in cities, not less than the board reports to be absolutely required. 3-4 Geo. V. c. 43, s. 359.

Appointment of members of police force.

Rev. Stat. c. 94.

360. The members of the police force shall be appointed by and hold office during the pleasure of the board, and shall take and subscribe an oath similar to that set out in section 20 of *The Constables Act.* 3-4 Geo. V. c. 43, s. 360.

As to liability of municipal corporations for acts of police constables, see notes to s. 8, under that heading.

361. The board may make regulations for the government of the police force, for preventing neglect or abuse, and for rendering it efficient in the discharge of its duties. 3-4 Geo. V. c. 43, s. 361.

Board to make regulations.

362. The members of the police force shall be subject to the government of the board, and shall obey its lawful directions. 3-4 Geo. V. c. 43, s. 362.

Police officers to be subject to the Board.

363.—(1) The council shall appropriate for and pay such remuneration to the members of the police force as the board may determine, and shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing, and other things as the board may deem requisite and require for the accommodation, use, and maintenance of the force.

Remuneration of police officers.

(2) The council may pay any sum required for the protection, defence, or indemnification of any member of the police force, where an action or prosecution is brought against him, and costs are necessarily incurred or damages are recovered, if the board certifies that the case is a proper one for such payment or indemnity. 3-4 Geo. V. c. 43, s. 363.

Indemnifying police officers.

Where there is no such provision as that contained in subs. 2, a municipal corporation may not apply its funds in indemnifying a constable, appointed by the council, who has arrested a person for a criminal offence, and for so doing has an action brought against him: Pease v. Moosomin (1901), 5 Terr. L.R. 207.

364. The council of every town not having a board shall, and the council of every village may, appoint one chief constable and one or more constables. 3-4 Geo. V. c. 43, s. 364.

Constables in towns and villages.

365. The council of a county and of a township may appoint one or more constables. In the case of a township, the remuneration of such constable or constables may, if the council deems proper, be paid by a general rate levied on any defined section or area of the township. 3-4 Geo. V. c. 43, s. 365; 7 Geo. V. c. 42, s. 10.

County and township constables.

The last sentence was added by 7 Geo. V. c. 42, s. 10.

Powers of police officers, constables, etc.

366.—(1) The members of a police force, the high bailiffs and the constables appointed under the authority of this Part shall have the same powers and privileges, be subject to the same liability, perform the same duties, be subject to suspension in the same manner, and may act within the same limits, as a constable appointed by the Court of General Sessions of the Peace.

(2) The provisions of subsection 1, as to suspension, shall not apply to a member of the police force of a city or town which has a Board of Commissioners of Police. 3-4 Geo. V. c. 43, s. 366.

Duties of police officers, constables, etc.

367. The members of a police force, a high bailiff, a chief constable and the constables appointed under this Part shall be charged with the duty of preserving the peace, preventing robberies, and other crimes and offences, including offences against the by-laws of the municipality, and of apprehending offenders, and laying information before the proper tribunal, and prosecuting and aiding in the prosecution of offenders. 3-4 Geo. V. c. 43, s. 367.

[*As to appointment of High Constable by county, see The Constables' Act, Rev. Stat. c.* 94, *s.* 8.]

Salary and remuneration.

368.—(1) The council by which a high bailiff, chief constable or a constable is appointed under the authority of this Part may provide for the payment to him of such salary or remuneration as the council may determine.

Fees of salaried constable.

(2) The council may agree with a salaried constable appointed either by the council or by the Board of Commissioners of Police that he shall keep for his own use the fees of his office, or may require them to be paid to the treasurer for the use of the corporation. 3-4 Geo. V. c. 43, s. 368.

Arrests without warrant by constables for alleged breaches of the peace.

369. Where any person complains to the chief constable or a constable of a city or town that a breach of the peace has been committed, and that officer has reason to believe that it has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing it is necessary to prevent his escape, or a renewal of the breach of the peace, or immediate violence to person or property, if the person complaining gives satisfactory security to the officer that he will, without delay, appear and prosecute the charge, the officer may, without warrant, arrest or cause to be arrested the person charged, in order to his being brought as soon as conveniently may be before the police magistrate or a justice of the peace to be dealt with according to law. 3-4 Geo. V. c. 43, s. 369.

When mayor or police magistrate may suspend constable.

370.—(1) If there is no Board of Commissioners of Police for a town, the mayor or the police magistrate may suspend from office, for any period in his discretion, the chief constable or any constable of the town, and may appoint some other person to the office during such period; and, if he considers the suspended officer deserving of dismissal, he shall, immediately after suspending him, so report to the council, and the council may dismiss such officer, or may direct him to be restored to his office after the period of suspension has expired.

Incapacity of such officer to act. Salary to cease.

(2) During suspension, the officer shall not act except with the written permission of the mayor or police magistrate who suspended him, or be entitled to any salary or remuneration. 3-4 Geo. V. c. 43, s. 370.

COURT HOUSES, GAOLS, ETC.

Establishment.

Existing county and district towns continued.

371. Until otherwise provided by law the existing county and district towns shall continue to be the county and district towns of the counties and districts in which they are respectively situate. 3-4 Geo. V. c. 43, s. 371.

County to provide court house and gaol.

372.—(1) The corporation of every county shall provide and maintain a county court house and a county gaol.

Sufficient for county and city.

(2) The court house and the gaol shall be sufficient for the purposes of every city and separated town, which forms part of the county for judicial purposes as well as for the purposes of the county.

Maintenance of gaol.

Rev. Stat. c. 293.

(3) The gaol shall be provided and maintained in conformity with the provisions of *The Gaols Act*, and to the satisfaction of the Lieutenant-Governor in Council.

(4) Subsection 2 shall not apply to the court house if the city has a court house of its own, or to the gaol if the city has a gaol of its own. 3-4 Geo. V. c. 43, s. 372.

County council may pass by-laws as to county buildings.

373.—(1) The council of a county or of a city may pass by-laws for erecting, enlarging or improving a court house, or gaol, and shall keep the same in repair and provide the food, fuel, and other supplies required therefor.

Acquiring land for court houses.

(2) The corporation of a county may acquire land within a city or separated town, which is the county town for the purpose of erecting and may erect thereon a court house, a gaol, and buildings for use as a county hall and for offices for the county officials. 3-4 Geo. V. c. 43, s. 373.

Gaols and court houses in counties and cities, etc., not separated.

374. The court house and gaol of the county in which a city or separated town is situate, shall, except where the city has provided one for itself, be the court house or gaol, as the case may be, of the city or town, and the sheriff and gaoler shall receive and safely keep, until duly discharged, all persons committed to the gaol by any competent authority of the city or town. 3-4 Geo. V. c. 43, s. 374.

Care of Court Houses and Gaols.

Custody of gaols.

Keepers.

375.—(1) The sheriff shall have the care of the county gaol, gaol offices and yard, and gaoler's apartments, and the appointment of the gaoler and officers of the gaol, whose salaries shall be fixed by the county council, subject to the revision or requirement of the Inspector of Prisons and Public Charities.

(2) The appointment or dismissal of a gaoler shall be subject to the approval of the Lieutenant-Governor in Council. 3-4 Geo. V. c. 43, s. 375.

Appointment and dismissal of gaolers.

376. A gaoler or an officer of the gaol shall not demand or receive any fee, perquisite, or other payment from any prisoner. 3-4 Geo. V. c. 43, s. 376.

Gaoler not to accept fees.

377.—(1) The county council shall have the care of the court house and of all offices, rooms and grounds connected therewith, whether the court house is a separate building or is connected with the gaol, and the appointment of the caretakers thereof, and shall, from time to time, provide all necessary and proper accommodation, fuel, light, stationery, and furniture for the Provincial Courts of Justice, other than the Division Courts, and for the library of the Law Association of the county, such last-mentioned accommodation to be provided in the court house, and proper offices, together with fuel, light, stationery, and furniture, and, when certified by the Attorney-General to be necessary, with typewriting machines, for all officers connected with such Provincial Courts, other than the Crown Attorney of the city of Toronto. [*As to Division Courts, see Rev. Stat. c.* 63.]

County council to have care of court house, etc.

See Mitchell v. Pembroke (1889), 31 O.R. 348, as to duties in respect of police magistrates.

The requirement of The Police Magistrates Act, R.S.O. c. 88, s. 23, that the council shall furnish a police magistrate for the county with a proper office, together with fuel, light and furniture, extends to a police magistrate, whether appointed under s. 13 (on the initiative of the council) or s. 14 by the Lieutenant-Governor in Council, without action by the council, and although he may have a private office of his own as a barrister or solicitor: Holmested v. Huron (1915), 24 D.L.R. 561.

A local master has no right to be furnished with a copy of Holmsted and Langton's Judicature Act and Rules, which he claimed was part of the furniture of his office: In re Local Offices of High Court (1906), 7 O.W.R. 316.

The county council is not bound to provide accommodation for the clerk of the peace and Crown Attorney elsewhere than in the county town: Rodd v. Essex (1909), 19 O.L.R. 659, (1910) 44 S.C.R. 137.

(2) The council of the Corporation of the city of Toronto shall provide proper offices, with fuel, light, stationery, and furniture for the Crown Attorney of the city.

Liability for furniture for use of county officials.

(3) A corporation shall not be liable to pay for furniture, unless it has been ordered by the council or by some person authorized by it so to do. 3-4 Geo. V. c. 43, s. 377.

City gaols to be regulated by by-laws of city council.

378. The care of the gaol or court house of a city shall be regulated by by-law of its council. 3-4 Geo. V. c. 43, s. 378.

Costs and Expenses of Court Houses and Gaols.

Liability of cities and towns separated from counties for erection and maintenance of court house, etc.

Rev. Stat. c. 124.

379.—(1) A city or a separated town shall, as part of the county for judicial purposes, so long as the county court house or gaol is also that of the city or separated town, bear and pay its just share or proportion of all charges and expenses from time to time incurred for the purposes mentioned in section 23 of *The Registry Act*, and in erecting, enlarging, improving, repairing or maintaining such court house or gaol, and of their proper lighting, cleaning, and heating; of drafting, selecting, enrolling and paying jurors; in providing the accommodation and other matters mentioned in subsection 1 of section 377, and of all other charges relating to the administration of justice, except such as the county is entitled to be repaid by the province and except charges connected with coroners' inquests and constables' fees and disbursements.

No compensation can be awarded to a county corporation in respect of the use by a city separated from the county of a court house and gaol unless the question is specifically referred by a by-law of each municipality.

A claim for compensation for the care and maintenance of prisoners stands, as far as the meaning to be given to the word "city" is concerned, upon the same basis as a claim for compensation for the use of the court house and gaol.

The controlling element in determining the contribution to be paid by the city corporation for the use of the court house and gaol is the number of prisoners sent up by the city authorities, and perhaps, though this is very doubtful, for offences committed in the city.

There is no warrant for making a charge for user based upon the cost of the site, erection of buildings, etc.

In re Carleton and Ottawa (1897), 24 A.R. 409, (1898) 28 S.C.R. 606.

A county corporation, bound by law to provide and keep constantly in perfect repair a suitable and ample metal safe or fireproof vault in the registry office of the county, has no authority to bind a city or town corporation within the county for the cost of a building part of which is to be used as a registry office and part as a hall for the meetings of the council and for the sittings of the district magistrates' court. If it is desired to erect a building for such purposes, the cost of the different parts should be established by the tenders received for the construction or by other sufficient evidence, and in that case the city or town corporation would be liable for the cost of the part absolutely required for the registry office and fireproof vault or safe: Comte de Richelieu v. Sorel (1899), Q.R. 8 Q.B. 526.

In conferring upon the councils of certain local municipalities the powers of county councils (art. 1081 of the Municipal Code), the law does not detach them from the counties of which they form part, and they are, therefore, subject to the requirements of by-laws passed by the county council for defraying the cost of the court houses, registry office, etc.: Ile aux Coudres v. Charlevoix (1910), Q.R. 19 K.B. (Second Division) 362.

Allowance to county for use of court house for Division Courts.

(2) The use of the court house for the sittings of a Division Court of a division which comprises the whole or a part of a city or separated town, may be taken into account in determining the amount to be paid by the city or town for the maintenance of the court house.

Reference to arbitration in case of disagreement.

(3) If the council of the city or separated town and the council of the county are unable to agree as to the amount to be paid by the city or town, the same shall be determined by arbitration.

Purchase of land and erection of buildings for municipal and judicial purposes.

(4) The council of a county and of a city or separated town situate in the county may agree:

(*a*) To acquire land within the county town for the purpose of erecting thereon buildings for the joint use of the county and city or town, for municipal and judicial purposes;

(*b*) For the erection, maintenance, use, management, and control of such buildings;

(*c*) For fixing the amount which each corporation shall pay or contribute for such purposes;

(*d*) For the subsequent disposition of such land and buildings, and of any insurance or other money that may be received in respect thereof;

and may pass all such by-laws as may from time to time be necessary for acquiring the land, and carrying out the agreement. 3-4 Geo. V. c. 43, s. 379.

[*As to payment of expenses of shorthand writer and interpreter, see The County Judges Act, Rev. Stat. c.* 58, *ss.* 18 (5), 19.]

[*As to payment by city or separated town of proportion of certain expenses under The Registry Act, see that Act, Rev. Stat. c.* 124, *s.* 8.]

What arbitrators to take into account.

380. Where the court house, gaol or registry office was erected before the city or town ceased to be part of the county for municipal purposes the arbitrators may take into account in determining the amount to be paid by the city or town the value of the respective interests of the county and of the city or town in such building and the extent of the use of it by them respectively. 3-4 Geo. V. c. 43, s. 380.

Insurable interests of corporations in certain cases.

381. The corporation of a county, city, or separated town shall have, respectively, insurable interests in the county court house and gaol, and the furniture thereof, in the proportions in which they are, for the time being, liable to contribute under section 379. 3-4 Geo. V. c. 43, s. 381.

Liability of city to contribute to cost of erecting court houses and gaols.

382. Where a city is required to contribute to the cost of erecting, enlarging or improving a county court house or gaol, such city shall not be bound to pay for any part of the expenditure, unless it has been concurred in by its council, or, if the council does not concur, the propriety and the amount of the expenditure has been determined by arbitration. 3-4 Geo. V. c. 43, s. 382.

Site for court house or gaol.

383. The site of the court house or gaol shall be determined by arbitration, unless the councils of the county and city agree as to the site. 3-4 Geo. V. c. 43, s. 383.

384.—(1) A city which uses the county court house or gaol, and a separated town shall pay to the county such compensation therefor, and for the care and maintenance of prisoners, as may be mutually agreed upon, or determined by arbitration.

Compensation by city or town for use of court house, etc.

(2) In determining the compensation to be paid for the care and maintenance of prisoners, the arbitrators shall, so far as they deem the same just and reasonable, take into consideration the original cost of the site and erection of the gaol and gaol buildings and of repairs and insurance, so far as they have been borne by one or other of the municipalities, and the cost of maintaining and supporting the prisoners, as well as the salaries of all officers and servants connected therewith. 3-4 Geo. V. c. 43, s. 384.

Matters to be considered in determining compensation.

385. After five years from the time when the amount of the compensation was agreed upon or determined by arbitration, either under section 379 or after a direction by the Lieutenant-Governor in Council under the authority of this section, the Lieutenant-Governor in Council, upon the application of either corporation may direct that the existing arrangement shall cease after a day to be named and that the compensation to be paid from that day shall be settled by agreement or be determined by arbitration. 3-4 Geo. V. c. 43, s. 385.

When the amount of compensation may be reconsidered.

386.—(1) The council of every local municipality may establish, maintain, and regulate lock-up houses for the detention and imprisonment of persons sentenced to imprisonment therein for not more than ten days, and of persons detained for examination on a charge of having committed any offence, or for transfer to any common gaol for trial, or in the execution of any sentence; and such persons may be lawfully received and so detained in the lock-up.

Lock-up houses.

(2) Two or more local municipalities may unite in establishing, maintaining and regulating a lock-up house, and such lock-up house shall be deemed to be the lock-up house of each of them.

Joint lock-up houses.

Constable in charge.

(3) Every lock-up house shall be placed in the charge of a constable appointed for that purpose.

Salary.

(4) The council may provide for and pay the salary or other remuneration of the constable in charge of a lock-up. 3-4 Geo. V. c. 43, s. 386.

A small rural township in British Columbia is not bound to have a watchman constantly on duty to guard against the risk of fire in a wooden cell used for the custody of prisoners, in which there is no fire and matches are not allowed: McKenzie v. Chilliwack (1909), 15 B.C.R. 256, 10 W.L.R. 118, L.R. (1912) A.C. 888, 8 D.L.R. 692, 29 T.L.R. 40.

In this case it was assumed by the Judicial Committee, for the purposes of the appeal (but without pronouncing any decision on the point), that the corporation was responsible for the appointment of the gaoler for the lock-up, and that, if the appointment was not fitly or carefully made, it would be liable for any reasonably probable consequence.

A municipal corporation which maintains a lock-up is not liable to prisoners who complain of negligence of those in charge of it, *e.g.*, in causing illness through lack of proper heating. In maintaining such a lock-up a corporation is not exercising its corporate powers for the benefit of the inhabitants of the municipality in their local and particular interest, but is performing a public service entrusted to it in the interests of general government. A constable in charge of such a lock-up, though appointed by the council, is not to be regarded as the servant or agent of the corporation, but is a public official, for whose acts or decisions civil responsibility does not attach to the corporation: Nettleton v. Prescott (1907-8), 16 O.L.R. 538, (1910) 21 O.L.R. 561.

Payment to be made to county when gaol used as a lock-up.

387.—(1) If a county town has not a lock-up house, approved by the Inspector of Prisons and Public Charities, the county gaol may be used for the purposes of a lock-up house, and if so used the corporation of the county town shall pay yearly to the county treasurer for the use of the county a resonable sum for the use of the gaol as a lock-up house, and for the expenses incurred by such use; and, in case of disagreement, the amount to be paid to the county shall be determined by arbitration.

(2) This section shall not apply to cities or separated towns. 3-4 Geo. V. c. 43, s. 387.

Expense of keeping prisoners in lock-up.

388. The cost of conveying a prisoner to, and of keeping him in a lock-up house, shall be defrayed in the same manner as the expense of conveying a prisoner to and keeping him in a common gaol of the county. 3-4 Geo. V. c. 43, s. 388.

Section 409 *of 29-30 V. c. 51 (See 36 V. c. 48, s. 367, R.S.O. 1877, c. 174, s. 449, 46 V. c. 18, s. 476, and R.S.C. 1896, Sched. B.), which is not repealed, is as follows:—*

When liable to confinement in lock-up.

409. Any justice of the peace of the county may direct by warrant in writing under his hand and seal, the confinement in a lock-up house within his county, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined, and either dismissed or fully committed for trial to the common gaol, and until such person may be conveyed to such gaol; also the confinement in such lock-up house, not exceeding twenty-four hours, of any person found in a public street or highway in a state of intoxication or any person convicted of desecrating the Sabbath; and generally may commit to a lock-up house instead of the common gaol or other house of correction, any person convicted on view of the justice, or summarily convicted before any justice or justices of the peace of any offence cognizable by him or them, and liable to imprisonment therefor under any statute or municipal by-law. 29-30 V. c. 51, s. 409.

INEBRIATE ASYLUMS.

Institutions for reclamation of habitual drunkards.

389.—(1) The council of a city having a population of not less than 50,000 may:

(*a*) Establish, erect and maintain within the city an institution for the reclamation and cure of habitual drunkards;

(*b*) Provide that the mayor, police magistrate, or any justice of the peace having jurisdiction in the municipality, may send or commit to such institution an habitual drunkard, with or without hard labour.

Rev. Stat. c. 296.

(2) Sections 62 to 70 of *The Private Sanitarium Act* shall apply to such institution. 3-4 Geo. V. c. 43, s. 389.

COMMITTAL TO INDUSTRIAL FARM.

Committal to industrial farm for indeterminate period.

390.—Where a person is convicted of being found drunk or disorderly in a public place contrary to a municipal by-law, within three months after a prior conviction for a like offence, he may be committed by the police magistrate or justice of the peace, before whom he is convicted, to an industrial farm of the locality in which the order for committal is made for an indeterminate period not exceeding two years. 3-4 Geo. V. c. 43, s. 390.

PART XIX.

POLLING SUBDIVISIONS AND POLLING PLACES.

Polling sub-divisions and places.

391. By-laws may be passed by the councils of local municipalities for dividing the wards of the city or town, or the village or township into two or more convenient polling subdivisions, and for establishing polling places therein.

Boundaries of polling sub-divisions.

(*a*) Except in cities, every polling subdivision shall have well-defined boundaries, such as streets, side-lines, concession lines or the like, and shall be formed in the most convenient manner, and so that the number of electors in each polling subdivision shall be as nearly as possible equal.

Number of electors in a subdivision.

(*b*) Such polling subdivisions shall be made or varied whenever the number of the electors in any polling subdivision in a city having a population of not less than 100,000 exceeds 200, and in any other municipality 300, in such a manner that the number in any polling subdivision shall not exceed 300.

Not to be in more than one electoral district.

(*c*) Where a municipality embraces parts of two or more electoral districts, a polling subdivision shall include territory in one electoral district only.

Alteration of subdivisions.

(*d*) Subject to clause (*f*), any alteration of polling subdivisions, or creation of new polling subdivisions, shall be made before the publication of the voters' lists.

Duty of clerk when population exceeds limit.

(*e*) Whenever the clerk finds that the number of electors in a polling subdivision exceeds 200 in a city having a population of not less than 100,000, or 300 in any other municipality, he shall notify the council of the fact.

Changes made after voters' list made up.

(*f*) Where such alterations have not been made before the publication of the voters' lists, they shall be made forthwith thereafter, but shall not take effect until the next voters' lists are being prepared.

(*g*) Whenever the council is of opinion that the convenience of the electors will be thereby promoted the council may make a redivision into polling subdivisions, and such redivision shall be made in conformity with this section.

New subdivision to be made when necessary.

(*h*) The number of electors shall be determined by the last revised assessment roll of the municipality.

Determining number of electors.

(*i*) The polling subdivisions shall be numbered consecutively, and a copy of the by-law, by which they are established, certified under the seal of the corporation and the hand of the clerk to be a true copy, shall, forthwith after the passing thereof, be filed by the clerk in the office of the Clerk of the Peace of the county or district in which the municipality is situate.

Subdivisions to be numbered.

(*j*) Any 5 electors may at any time within two months after such filing appeal in respect of any polling subdivision to the Judge of the County or District Court of the county or district, who shall have power to amend the by-law so as to make it conform with the provisions of this section, and the procedure on the appeal shall be the same as on a motion to quash a by-law, except that no recognizance or deposit shall be required.

Appeal.

(*k*) An election shall not be irregular or void or voidable for the reason that a polling subdivision which contains more than the prescribed number of electors has not been divided, if in the case of a city having a population of not less than 100,000 it does not contain more than 300, or in the case of any other municipality more than 400 electors.

Election not to be voided if subdivision is wrongly formed.

(*l*) Where a polling subdivision in a city, having a population of not less than 100,000 contains more than 300 electors, or a polling subdivision in any other local municipality contains more than 400 electors, or where a local municipality is not subdivided into polling subdivisions the

Subdivision for election about to be held.

council shall for the purpose of an election about to be held or a vote about to be taken subdivide it into as many subdivisions as may be necessary to provide in the case of such a city one for every 200 electors, and in the case of any other local municipality one for every 300 electors. 3-4 Geo. V. c. 43, s. 391.

Uniting polling subdivisions.

392. By-laws may be passed by the councils of urban municipalities for uniting for the purpose of any municipal election, including the election of school trustees, or the voting on a by-law or on a question submitted to the electors, any two adjoining polling subdivisions with one polling place therefor. 3-4 Geo. V. c. 43, s. 392.

Using public school for polling places.

393. By-laws may be passed by the councils of cities for providing that a public school house or a public building belonging to or controlled by the corporation in, or conveniently near to a polling subdivision, shall be used as the polling place of such subdivision.

Payment therefor.

(*a*) Where a school house is so used the council shall forthwith pay to the Board of Education a sum sufficient to cover any damage done to it and any expense for cleaning or otherwise caused by such use.

Consent of Public School Board.

(*b*) No school house shall be so used without the consent of the Board of Education.

Constable to attend each such polling place.

(*c*) The Board of Commissioners of Police or the chief constable shall cause a constable to attend at each polling place in a school house or public building in which an election is being held there to perform the duties required by this Act of a constable appointed by the returning officer. 3-4 Geo. V. c. 43, s. 393; 7 Geo. V. c. 42, s. 11.

The section applied only to cities having a population of not less than 100,000, but the words "having a population of not less than 100,000" were struck out by 7 Geo. V. c. 42, s. 11.

394. Where a polling place has been appointed for holding an election, or for taking a vote in a local municipality, and it is afterwards found that the building cannot be obtained, or is unsuitable for the purpose, the clerk may select in lieu of it the nearest suitable building which is available, and he shall post up and keep posted up a notice on the building named in the by-law, and in two other conspicuous places near by, directing the voters to the place so selected. 3-4 Geo. V. c. 43, s. 394.

In certain cases clerk may choose polling place.

PART XX.

POWERS OF MUNICIPAL COUNCILS.

INTERPRETATION.

nus defined.

395. "Bonus" where it occurs in sections 278, 288, 396 and 397 shall include:

(*a*) A grant of money as a gift or a loan, either conditionally or unconditionally.

Before the case of a loan was expressly provided for, it was held in Scottish American Investment Company v. Elora (1881), 6 A.R. 628, that a municipal corporation may lend money for the encouragement of a manufacturing establishment and that "bonus" does not necessarily import a gift.

(*b*) The guaranteeing of the repayment of money loaned to or the payment of a debt contracted by the person to whom the bonus is granted and the interest thereon.

In Quebec a by-law authorizing a municipal corporation to guarantee debentures issued by a company is not valid until approved by a vote of the ratepayers and by the Lieutenant-Governor in Council: Hanson v. Grand'Mere (1902), Q.R. 11 K.B. 77, (1902) 33 S.C.R. 50, L.R. (1904) A.C. 789, 20 T.L.R. 772.

(*c*) The gift or the leasing at a nominal rent of land owned by the corporation or the purchase of land as a site for buildings or works or as a means of access or for any other purpose connected with the manufacturing business to be aided.

A lease at a nominal rental of valuable property of a corporation is, in effect, a bonus to the lessee: Keay v. Regina (1912), 5 S.L.R. 372, 6 D.L.R. 327, 22 W.L.R. 185, 2 W.W.R. 1072.

(*d*) The stopping up, opening, widening, paving or improving of a highway or public place or the undertaking of any work or improvement which involves the expenditure of money by the corporation for the use or benefit of the manufacturing business to be aided.

The fact that the council, in serving the public interest, is at the same time serving that of the grantee of the bonus, is not an objection to a by-law for stopping up a highway and conveying it to a manufacturing company as a bonus: In re Inglis and Toronto (1905), 9 O.L.R. 562.

(*e*) The supplying of water, light or power by the corporation either free of charge or at a less rate than that charged to other persons.

(*f*) The total or partial exemption from municipal taxation or the fixing of the assessment of any property.

A by-law passed under the authority of s. 44 of 31 Vict. c. 30, which exempted from taxation new manufactures only in preference to those of the same kind already established, and only those persons doing a specified amount of business, was held to be bad and was quashed: In re Pirie and Dundas (1869), 29 U.C.R. 401.

In re Scott and Tilsonburg (1885), 10 O.R. 119, (1886) 13 A.R. 233, in which it was held that a by-law exempting from taxation, valid on its face, was in the circumstances the granting of a bonus, and was invalid.

The facts were that the corporation was desirous of having connection with the Canada Southern Railway and that the company was willing to put in a spur line if the corporation would provide the right of way and contribute to the cost of the construction of the line. The council was unwilling to submit a by-law to the electors, but, having power to pass the exempting by-law without, as is now required, having it assented to by the electors, arranged with a ratepayer to give him the exemption in consideration of his furnishing the right of way and building the spur line.

The view of the Court was that this was an evasion of the provisions of The Municipal Act which required that a bonus by-law should be passed only with the assent of the electors.

Where a company carried on both a manufacturing or milling business and a general grain merchant business, the first only of which the council had power to exempt from taxation, a by-law exempting both businesses from taxation was held to be bad.

It was held also that the by-law was bad because it exempted all the land leased by the company, and not the mill only, as other buildings suitable alone for the grain business might be erected on the land.

It was also held to be bad upon the ground that it discriminated against other large milling establishments within the municipality.

In re The People's Milling Company and Meaford (1885), 10 O.R. 405.

A by-law purporting to be passed under the authority of s. 368 of The Municipal Act of 1883, as amended by 47 Vict. c. 32, s. 8, which provided that the aggregate assessment of the properties of a company should be and remain for ten years at $50,000 and requiring the assessors to assess them at that sum, notwithstanding the erection of any buildings thereon, was held not to be a by-law within that enactment, and that it was opposed to public policy and morality in directing the assessors from time to time to limit their assessment: In re Denne and Peterborough (1885), 10 O.R. 767.

A by-law exempting from taxation a manufacturing establishment ceases to be operative when business is not carried on in it: Polson v. Owen Sound (1899), 31 O.R. 6.

Where a by-law provided for the leasing of property of a corporation and granted an exemption from taxes for a term of years, the exemption is a bonus within the meaning of this clause: In re Lamb and Ottawa (1904), 4 O.W.R. 408.

The by-law was held to be invalid for the further reason that the exemption included school taxes.

It would seem, though the report of the case does not so state, that the exemption was for the term of the lease, and there would appear to be much reason in the contention that the transaction was, in effect, a lease at a rental, with no obligation on the part of the tenant to pay the taxes, and, therefore, not open to the objection which was held to be fatal.

In Lamontagne v. Levis (1916), Q.R. 49 S.C. 293, referred to in the notes to s. 396, cl. (*c*), it was contended that the corporation had not the right to give the company the fixed assessment for which the resolution provided, but it was held that, as the council had power to exempt from taxation, it had *a fortiori* power to exempt from part of the taxation for which the company would have been liable.

(*g*) Generally the doing, undertaking or suffering on the part of the corporation of any act, matter or thing which involves or may involve the expenditure of money by it. 3-4 Geo. V. c. 43, s. 395.

BONUSES IN AID OF MANUFACTURES.

396. By-laws may be passed by the councils of all municipalities for granting a bonus for the promotion of manufactures in the municipality, or for the promotion of iron works, rolling mills, works for refining or smelting ore, or the establishment of grain elevators, or aiding a beet sugar factory, an arena, a sanitarium, or a hospital, within the municipality or an adjacent municipality, to such person, in respect of such branch of industry or undertaking, and on such terms and conditions as to security and otherwise as may be deemed proper.

Aid to manufactures, etc.

See s. 146 (8) of *The Ontario Temperance Act,* 6 Geo. V. c. 50, giving power to grant total or partial exemption from taxation except school and local improvement taxes. This power apparently can be exercised without the assent of the electors, but would apply only to taxes of the current year.

A by-law, valid on its face, purporting to provide for the purchase of a water power privilege for electric lighting purposes, but really intended to aid the owner of the water privilege in rebuilding a mill, is a by-law granting a bonus, and, in the absence of statutory authority to grant bonuses, the by-law is invalid: In re Campbell and Lanark (1893), 20 A.R. 372.

At this time municipal corporations had no power to grant a bonus for promoting any manufacture, that power having been taken away by 55 Vict. c. 43, s. 21.

The power was subsequently restored subject to new conditions as to its exercise.

A municipal corporation may pass a by-law granting a bonus to a person who will undertake to construct an aqueduct within the municipality, and may, under art. 637 of the Municipal Code, give him the exclusive privilege for 25 years.

If the privilege is limited to the exclusive right to lay pipes in the streets, it is not unconstitutional, and does not constitute an illegal monopoly.

If the terms in which the privilege is granted are such as to extend it beyond 25 years, that does not make the contract and by-law totally void, and the bonus can be claimed.

Lariviere v. Richmond (1901), Q.R. 21 S.C. 37.

A bonus to a factory must be granted, not by a resolution, but by by-law approved by the municipal electors and by the Lieutenant-Governor in Council: Beauregard v. Roxton Falls (1903), Q.R. 24 S.C. 474.

The directors of a company to which a bonus is granted may, without the authority of the shareholders, grant a hypothec upon the company's real estate to secure the performance of the conditions on which the bonus was granted: Commercial Rubber Company v. St. Jerome (1907), 4 E.L.R. 56 (Que.).

The corporation of a village may grant the exclusive privilege of placing pipes in all its streets for the purposes of an aqueduct for the period of 25 years.

When a by-law granting such a privilege does not give any bonus or impose any tax or oblige the ratepayers or residents of the municipality to take the water of the aqueduct, it is not necessary that the by-law should be approved by the electors or by the Lieutenant-Governor in Council.
Stuart v. Napierville (1916), Q.R. 50 S.C. 407.

Breaches of Conditions on which Bonus Granted.

Ontario Cases.

A bonus of $5,000, and a further bonus of $5,000 by way of loan, were agreed to be granted to a manufacturing company on conditions as to carrying on its business and employing a stated number of men in it, and a mortgage was to be given by the company to secure the loan and the performance of these conditions.

The by-law was attacked in an action, and a settlement was made by which the bonus of $5,000 by way of loan was relinquished and the number of men to be employed in the business was reduced. By mistake the mortgage which was afterwards executed contained all the provisions originally agreed upon.

The company did not employ the number of men that it was stipulated it should employ (*i.e.*, the reduced number), and an action was brought by the municipal corporation to recover $500 which the company had by the mortgage covenanted to pay if it should make default in keeping that stipulation. The company counterclaimed for the $5,000 that it had been agreed to be loaned, and set up that if the later agreement was binding upon the parties, the covenants "in the mortgage did not properly represent the true agreement, and that the mortgage was, therefore, null and void."

It was held that the mortgage might be reformed, and that, as the company did not offer to repay the $5,000 it had received, it was not open to it to set up that a mortgage according to the new terms was not authorized by the shareholders: New Hamburg v. The New Hamburg Manufacturing Company (1910), 1 O.W.N. 495.

A bonus was granted to an automobile manufacturing company on terms as to the employment of a stated number of workmen in each year for seven years, and a mortgage was taken for the amount of the bonus ($3,500), which was to be paid off to the extent of $500 in each year in which these terms were fulfilled. The company made an assignment for the benefit of creditors, and the mortgaged premises were sold to a furniture manufacturing company, which claimed to be entitled to credit on the mortgage in respect of the employment of the stipulated number of workmen in its business, but it was held that it was not so entitled: Woodstock v. Woodstock Automobile Manufacturing Company (1913), 5 O.W.N. 540, 25 O.W.R. 427, (1914) 6 O.W.N. 403.

Other cases as to breach of conditions on which bonuses were granted and as to the right to damages for the breach and the elements to be considered in assessing them: Brussels v. Ronald (1882), 4 O.R. 1, (1885) 11 A.R. 605, St. Thomas v. Credit Valley Railway Company (1888), 15 O.R. 673; Brighton v. Auston (1892), 19 A.R. 305; Whitby v. Grand Trunk Railway Company (1902), 3 O.L.R. 536.

QUEBEC CASES.

In Three Rivers v. Banque du Peuple (1893), 22 S.C.R. 352, it was held that a condition to keep in operation a bonused industry for the space of "four consecutive years" had not been complied with.

In that case the four years were to run from the establishment and putting in operation of the works, including a box factory, and, although that was done, the operation of the works ceased within the four years.

Where a bonus by-law contains a condition that the persons to whom it is granted shall employ a stated number of persons in each year, it is sufficient if there are employed and paid in each year the stated number of persons, and it is not necessary that they should be employed every day during the time: Levis v. King (1899), Q.R. 9 Q.B. 1.

Where a resolutory condition precedent to the payment of a bonus under a municipal by-law has not been fulfilled within the time limited on pain of forfeiture, an action will lie for the annulment of the by-law at any time after default, although there may have been part performance by the grantee of the bonus and a part of it may have been advanced to him: Sorel v. Quebec Southern Railway Company (1905), 36 S.C.R. 686.

(*a*) No person to whom, or who is interested in or holds shares in a company and no nominee of a corporation to which a bonus is to be granted shall be entitled to vote on the by-law.

Shareholders not to vote on by-law.

The "nominee" referred to is the person appointed by a corporation to vote as its nominee on a money by-law: s. 265 (4).

(*b*) No by-law shall be passed granting a bonus in respect of a branch of industry of a similar nature to one established in the municipality unless the person by whom it is carried on consents in writing to the granting of the bonus.

Industry not to be aided where one of like nature established.

Bonus not to be granted to industry already established elsewhere in Ontario.

(*c*) No by-law shall be passed granting a bonus in respect of a business established elsewhere in Ontario, or which has been removed to the municipality from another municipality in Ontario, whether the business is to be carried on by the same person or by a person deriving title or claiming through or under him or otherwise or by such person in partnership with another person or by a joint stock company or otherwise.

"Established elsewhere in Ontario."—Where the bonus is granted in respect of a business established elsewhere in Ontario, the fact that the person to whom the bonus is to be granted had already decided to remove his business from the place where it is carried on is immaterial, and the granting of the bonus is unlawful: In re Markham and Aurora (1901-2), 3 O.L.R. 609, (1902) 32 S.C.R. 457.

"Established" does not mean "set up on a secure and permanent basis," and a business which had been carried on for ten months, though carried on in rented premises, is an "industry already established" in the place where the business is carried on: In re Black and Orillia (1913), 5 O.W.N. 67, 25 O.W.R. 17.

The prohibition extends to the granting of a bonus to a company carrying on business elsewhere in the province in aid of a branch of its business to be established in the bonusing municipality: In re Wolfenden and Grimsby (1914), 5 O.W.N. 901.

In Lamontagne v. Levis (1916), Q.R. 49 S.C. 293, referred to in the notes to s. 401, par. 1, it was objected that the resolution in question was invalid because, by art. 5930, R.S.Q. 1909, municipal corporations are prohibited from giving a bonus for the purpose of bringing into the municipality an industrial establishment already established in the province, and that one of the conditions upon which the bonus was given being that the company should remove the Quebec factory to Levis was in contravention of the statute.

The bonus was given to a company which had for several years carried on the manufacture of cigars in the municipality. The company had also in the city of Quebec an establishment for the preparation of the tobacco leaf. This work occupied three of the winter months, and the workmen engaged in it were in part workmen employed in the manufactory at Levis and partly men engaged for the occasion. During the remainder of the year the Quebec establishment was closed, the reason for doing this part of the work at Quebec being that there was not room for it at the Levis factory.

It was held that the resolution was not open to this objection, that what the company did at Quebec was only an accessory of the manufactory at Levis, and without the latter the Quebec manufactory would be without its *raison d'etre*, and that the corporation had the right to stipulate for its removal to Levis—to say, choose between Quebec and Levis—it is not for the purpose of bringing you here that we require that all the work be done here, but, because our bonus may not go out of our city, we wish to bonus only an industry which will be entirely carried on there.

It was also held that, after the destruction of the Levis factory by fire, the bonused industry was not an established industry within the meaning of the statute.

The object of the legislation is to eliminate entirely competing bonuses, and any device by which such a bonus is sought to be given is a contravention of this provision.

In re Alliston and Trenton (1917), 11 O.W.N. 288, 394.

Limitation of power to bonus.

(*d*) No such by-law shall be passed where the granting of the bonus would for its payment and the payment of bonuses already granted require an annual levy for the payment of principal and interest exceeding 10 per cent. of the total amount required to be raised by taxation for the year next preceding the passing of the by-law, but if the bonus is by way of loan or guarantee, any amount to be repaid annually by the person or company so aided shall be taken into account and deducted from such annual levy for the purpose of ascertaining whether the limit of 10 per cent. will be exceeded.

Period of exemption or fixed assessment.

(*e*) Where the bonus is exemption from taxation or a fixed assessment the same shall not be for a longer period than ten years, but may be renewed from time to time for further periods not exceeding ten years at any one time, and the by-law shall not apply to or affect taxation for school purposes.

Applying payments made by persons bonused in payment of debentures and interest.

(*f*) Where the bonus is by way of loan, the by-law may provide that all money received on account of the loan shall be deposited to a special account in a chartered bank, and that such money, or a sufficient part of it, shall be applied in payment of the amount falling due in such year for principal and interest on account of debentures issued to pay the bonus. 3-4 Geo. V. c. 43, s. 396; 5 Geo. V. c. 34, ss. 21, 22 (1).

In London v. Newmarket (1912), 3 O.W.N. 565, 2 D.L.R. 244, it was held that an injunction ought not to be granted to restrain the final passing of an invalid bonus by-law which had received the assent of the electors.

An injunction to restrain the passing of a by-law giving a bonus without obtaining the assent of the electors will not be granted. The proper course is to await the passing of the by-law and then to move to quash it: Keay v. Regina (1912), 5 S.L.R. 372, 6 D.L.R. 327, 22 W.L.R. 185, 2 W.W.R. 1072.

An injunction to restrain the submission to the electors of a bonus by-law alleged to contravene s. 396 (*c*) was refused, the application being made eight days before the day on which the vote was to be taken: Fitzbridges v. Windsor (1914), 5 O.W.N. 969.

BONUSES IN AID OF RAILWAYS.

Interpretation.

397.—(1) In this section—

"Railway."

(*a*) "Railway" shall include a railway operated by steam, electrical or other motive power and a street railway;

"Railway company."

(*b*) "Railway company" shall include a person authorized by a special Act to construct a railway, and shall also include a railway company incorporated by or under the authority of the Parliament of Canada or of the late Province of Canada or of this legislature.

Power to aid railways.

(2) By-laws may be passed by the councils of all municipalities for granting a bonus to a railway company for the purpose of securing the construction of a railway in the construction of which the inhabitants of the municipality are interested or through any part of or near to which the railway will pass or the works of the company be situate.

See notes to s. 280 (1), In re Blenheim (1910), 1 O.W.N. 363.

Petition to council requiring submission of

(3) Upon presentation to the council of a petition expressing the desire to aid the railway company and stating in what way

and to what amount signed by a majority of the members of the council, or in the case of a county by at least fifty resident freeholders qualified to vote on the by-law, of each of the local municipalities in the county, or in the case of a local municipality by at least 50 resident freeholders thereof qualified to vote on the by-law, the council shall, within six weeks after the receipt of the petition by the clerk, take the requisite proceedings for submitting, in the manner provided by this Act, a by-law for granting the bonus for the assent of the electors qualified to vote thereon.

by-law to electors.

Reference to Municipal Board of petition against submission of by-law.

(4) Where the aid is proposed to be given by a county, if a petition signed by 50 resident freeholders of the county against submitting the by-law on the ground that certain of the local municipalities or parts of them would be injuriously affected thereby or on any other ground ought not to be included therein, and if a sum sufficient to defray the expense of the reference is deposited by the petitioners with the treasurer of the county, the council shall forthwith refer the petition to the Municipal Board.

Powers of board to require amendment of by-law, etc.

(5) The board may direct that the prayer of the petition be not granted, or that any of the local municipalities or any part of them or any of them shall be excluded from the operation of the by-law, and that the by-law be amended accordingly.

Levy of rates where part of county excluded from operation of by-law.

(6) Where the board directs that the by-law be amended by excluding the whole or any part of a local municipality from the operation of it, the by-law shall be amended by imposing the rate to provide for the payment of the bonus or of the principal and interest of the debentures issued therefor on the rateable property within that part of the county not so excluded and that only, and the assent to the by-law of those persons qualified to vote on it in that part of the county not so excluded shall be sufficient, and they shall be the only persons entitled to vote on the by-law.

Option of company as to submission of

(7) The by-law as confirmed by the board or amended by its direction shall, at the option of the railway company, be sub-

amended by-law.

mitted by the council for the assent of the electors qualified to vote thereon.

Expenses of reference—how borne.

(8) If the prayer of the petition is not granted by the board, the expense of the reference shall be borne by the petitioners, and if the board directs the by-law to be amended by excluding any part of the county from the operation of the by-law shall be borne by the railway company or by the corporation of the county or in such proportions between them as the board may direct.

Company may be required to pay expenses of submitting by-law.

(9) The council may require that before submitting the by-law for the assent of the electors the railway company shall deposit with the treasurer of the municipality a sum sufficient to defray the expense of its submission.

Requirements as to passing by-law.

(10) If the by-law receives the assent of the electors, the council shall, within four weeks from the day on which the vote was taken, pass the by-law.

Disposal of debentures.

(11) Unless otherwise provided by the by-law, the debentures, the issue of which is provided for by it, shall be issued and disposed of or delivered to the trustees appointed to receive them as hereinafter provided.

Extension of time for commencement or completion of railway.

(12) Where the period within which the construction of the railway or other work is to be commenced or to be completed is provided for in the by-law, the council may by by-law or resolution from time to time extend such period, but no extension shall be for longer than one year at a time.

Limit of two cents not to include bonuses to railways.

(13) A bonus may be granted or shares may be subscribed for under the authority of this section notwithstanding that the yearly municipal taxation may be thereby increased beyond the limit provided for by section 297, if it does not require the levying of an annual rate for all purposes, exclusive of school rates, greater than three cents in the dollar.

Bonuses by sections of township.

(14) By-laws may be passed by the councils of townships for granting a bonus for any of the purposes mentioned in subsection 2 by a section of the township, and in that case the rates imposed by the by-law to provide for the payment of the bonus or the principal and interest of the debentures issued therefor shall be imposed upon the rateable property within such section and that only.

Petition for submission of by-law—what required.

(15) In the case of a by-law to which the next preceding subsection applies, the petition shall be by a majority of the members of the council or at least fifty freeholders of the section qualified to vote on the by-law, and shall define the section by metes and bounds or by lots and concessions, and the assent to the by-law of those persons qualified to vote on it in the section shall be sufficient, and they shall be the only persons entitled to vote on the by-law.

(16) In all other respects the provisions of subsections 1 to 13 shall apply.

Subscribing for stock.

(17) By-laws may, with the assent of the electors qualified to vote on a money by-law, be passed by the councils of all municipalities for subscribing for any number of shares in the capital stock of a railway company.

Where a municipal corporation is empowered to subscribe for and obtain shares in a company, it has power to transfer the shares to individuals to hold as trustees for the corporation: Lucas v. North Vancouver (1913), 18 B.C.R. 239, 12 D.L.R. 802, 24 W.L.R. 966, 4 W.W.R. 1381.

(18) Clauses (*a*), (*e*) and (*f*) of section 396 shall apply to a by-law passed under the authority of this section.

Delivery of debentures to three trustees.

(19) Where a by-law is passed under the authority of this section for granting a bonus to a railway company, the debentures therefor shall, within six months after the passing of the by-law, be delivered to three trustees, all of whom shall be residents of Ontario, who shall be named, one by the Municipal Board, one

by the railway company, and one by the head of the municipality, or if bonuses have been granted by the councils of more municipalities than one by the majority of the heads of the municipalities by which the bonuses have been granted.

Appointment of trustees in case of failure to appoint in first instance.

(20) If the head of the municipality or the heads of the municipalities, as the case may be, do not within one month after notice in writing of the appointment of the railway company's trustee name their trustee, the company may name him, and if the board does not name a trustee within one month after notice in writing to the board of the appointment of the other two trustees, the company may name the third trustee.

Removal of trustee by board.

(21) The board may remove a trustee and may appoint a new trustee in his stead, and if a trustee dies or resigns his trusteeship or goes to reside out of Ontario, or otherwise becomes incapable of acting, his trusteeship shall become vacant, and the board may appoint a trustee in his stead.

Trusts on which debentures to be held.

(22) The trustees shall receive and hold the debentures in trust:—

(*a*) Under the direction of the railway company, but subject to the conditions of the by-law as to the time or manner of so doing, to convert the same into money or otherwise dispose of them;

(*b*) To deposit the debentures or the amount realized from the sale of them in a chartered bank having an office in Ontario, in the name of "The   Railway Municipal Trust Account" (*designating the name of the railway*).

(*c*) To deliver the debentures or pay the proceeds of the sale of them to the company from time to time as it becomes entitled thereto under the conditions of the by-law on the certificate of the chief engineer of the railway company, Form 25.....

(23) The certificate shall be attached to the cheque or order drawn by the trustees for such delivery or payment.

Certificate of engineer to be attached to cheque.

(24) If the chief engineer wrongfully grants any such certificate he shall incur a penalty of $500, recoverable by any person who may sue therefor.

Penalty for wrongfully granting certificate.

(25) The act of any two of the trustees shall be as valid and binding as if they had all joined therein.

Acts of two trustees to bind.

(26) The trustees shall be entitled to their reasonable fees and charges from the trust fund. 3-4 Geo. V. c. 43, s. 397.

Fees of trustees.

398. BY-LAWS MAY BE PASSED BY THE COUNCILS OF ALL MUNICIPALITIES.

Amateur Athletic and Aquatic Sports.

1. For aiding amateur athletic or aquatic sports.

Sports.

Bands of Music.

2. For aiding the establishment or maintenance of bands of music by any corps of active militia within the county, or any other bands of music.

Bands of music.

Bathing Houses.

3. For establishing and maintaining, or for granting money to aid in the construction of public bathing houses.

Public bathing houses.

Census.

4. For taking a census of the inhabitants.

Local census.

Charitable Institutions, etc.

5. For granting aid to any charitable institution or out-of-door relief to the resident poor.

Aid to charities.

Crimes—Discovery of.

6. For offering and paying rewards for the discovery, apprehension and conviction of persons who have or are believed or

Rewards for apprehension of criminals.

suspected to have committed flagrant crimes or to have contravened clause (*g*) of section 138, or to have been guilty of personation as defined by *The Dominion Election Act* or by *The Ontario Election Act* within the municipality.

R.S.C. c. 6. Rev. Stat. c. 8.

A county corporation is liable to pay for special services, not covered by the ordinary tariff, performed by a constable or other person under the direction of the warden and the Crown Attorney, which were, in their opinion, necessary for the detection of crime or the capture of persons believed to have committed serious crimes, and it is not necessary that the account be certified by the warden and the Crown Attorney: Sills v. Lennox (1900), 31 O.R. 512.

The authority of the warden and the Crown Attorney was conferred by R.S.O. (1887), c. 101, s. 12, now R.S.O. (1914), c. 96, s. 11 (1).

Drainage.

Construction of drains, sewers, sewage disposal works, etc.

7. For constructing, maintaining, improving, repairing, widening, altering, diverting and stopping up drains, sewers or watercourses; providing an outlet for a sewer or establishing works or basins for the interception or purification of sewage; making all necessary connections therewith, and acquiring land in or adjacent to the municipality for any of such purposes.

A municipal corporation having power to construct public works may, in its discretion, construct them all at once or in portions or by territorial districts, and, therefore, may lawfully enact a by-law to establish a system of sewers in the municipality excepting one of its wards: Juneau v. Levis (1905), Q.R. 14 K.B. 104.

Driving or Riding on Roads and Bridges.

Regulating driving on roads and bridges.

8. For regulating the driving of horses or cattle and the riding of horses on highways and bridges.

Prohibiting racing on highways.

9. For prohibiting racing, immoderate or dangerous driving or riding on highways or bridges.

[*See section* 404, *par.* 3, *as to setting apart streets in cities of* 100,000 *population for fast driving.*]

Electors—Submitting Questions to.

Submission of questions of general policy to electors.

10. For submitting to the vote of the electors of any municipal question not specifically authorized by law to be submitted.

Before the enactment of this provision there was no authority for submitting questions to the electors: Helm v. Port Hope (1875), 22 Grant 273; King v. Toronto (1902), 5 O.L.R. 163.

A by-law for submitting questions was quashed on the ground that the endeavour was "by the substitution of a tricky and adroitly drawn question practically to preclude any true expression of the views of electors upon the question proposed to be submitted": In re Gaulin and Ottawa (1914), 6 O.W.N. 30, 16 D.L.R. 865.

Exhibitions.

Acquiring land for agricultural exhibitions, etc.

11. For acquiring land within or without the municipality as a place for holding agricultural, horticultural or industrial exhibitions and for erecting and maintaining buidlings thereon for that purpose and for the management of the same.

Power to lease.

12. For leasing for any period not exceeding three years from the making of the lease, any part of the land acquired under paragraph 11, which is not immediately required for the purposes for which it was acquired.

Fat Stock and Other Shows and Exhibitions.

Aid to fat or live stock shows.

13. For granting or lending money or granting land in aid of any association, for the holding of a fat stock or live stock show or exhibition or any exhibition for the promotion or improvement of farming in any of its branches or departments.

Ferry Boats and Ferries.

Grants to ferries.

14. For making an annual grant towards the maintenance and operation of ferry boats or other appliances used at any ferry over a stream or other water separating a part of the municipality from another part of it, or separating it from another municipality in Ontario.

Fire Engines and Appliances.

Purchasing or renting fire engines, etc.

15. For purchasing or renting for a term of years or otherwise, fire engines, fire apparatus, and fire appliances and their appurtenances.

See Waterous Engine Works Company v. Palmerston (1890), 20 O.R, 411, (1892) 19 A.R. 47, (1892) 21 S.C.R. 556; and Silsby v. Dunnville (1880). 31 U.C.C.P. 301, (1883) 8 A.R. 524, 530, noted under s. 8 (Cases as to formalities essential to make a contract binding on the corporation).

Flooding—Prevention of.

Works for prevention of damage by flooding.

16. For the purpose of preventing damage to any highway or bridge or to any property within the municipality by floods arising from the overflowing or damming back of a river, stream or creek flowing through or in the neighbourhood of the municipality, for acquiring land in the municipality or in any adjoining or neighbouring municipality, and for constructing such works as may be deemed necessary for that purpose, and for deepening, widening, straightening, or otherwise improving such river, stream or creek in the land so acquired, or removing from it islands, rocks or other natural obstructions to the free flow of the water.

Free Libraries.

Public libraries.

17. For granting money or land in aid of any public library established under any Act in the municipality or in an adjacent municipality.

A grant may be made under this paragraph without the sanction of a by-law assented to by the electors: Hunt v. Palmerston (1902), 5 O.L.R 76, 1 O.W.R. 791.

Foxes and Other Wild Animals—Destruction of.

Bounties for destruction of foxes, etc.

18. For giving bounties not exceeding $5 per head for the destruction of foxes and other wild animals which kill or destroy poultry.

Harbours, Wharves, Beacons, etc.

Aid for construction of harbours, wharves, etc.

19. For granting aid for the construction of harbours, wharves, docks, slips and beacons on any river, lake, or navigable water passing in, through, or forming any part of the boundary of the county, on such terms and conditions as to security and otherwise as may be deemed expedient.

20. For making, improving and maintaining public wharves, docks and slips, and for preserving shores, bays, harbours, rivers or waters and the banks thereof.

Making, etc., of wharves, docks, etc.

21. For regulating harbours.

Regulating harbours.

22. For prohibiting the injuring, fouling, filling up or incumbering of a public wharf, dock, slip. drain, sewer, water or suction pipe, shore, bay, harbour, river or water.

Injuring, filling up, etc., of harbours, wharves.

23. For erecting and maintaining beacons.

Beacons.

24. For erecting and renting wharves, piers and docks in harbours, and floating elevators, derricks, cranes and other machinery for loading, discharging or repairing vessels.

Erecting docks, elevators.

A corporation which, under the authority of a provision of the Municipal Act then in force, which is the same as this paragraph, builds a dock on a river and passes a by-law for the collection of wharfage fees from those using the dock, including persons using it for loading and unloading bricks, is answerable for the damages sustained by a person who unloads bricks upon the dock, owing to its being, by reason of a structural defect, incapable of sustaining their weight, and the consequent collapse of the dock and the loss of the greater part of the bricks: Thompson v. Sandwich (1901), 1 O.L.R. 407.

25. For regulating vessels, crafts and rafts arriving in a harbour, and for imposing and collecting such reasonable harbour dues thereon as may serve to keep the harbour in good order, and to pay a harbour master.

Vessels, etc.

Harbour dues.

"Rafts."—"Rafts" includes lumber and sawlogs coming into a harbour: Bogart v. Belleville (1857), 6 U.C.C.P. 425.

26. For requiring the owner or occupant of the land in connection with which the same exist, to remove door-steps, porches, railings, or other erections or obstructions projecting into or over any public wharf, dock, slip, shore, bay, harbour, river or water.

Removal of doorsteps, railings, projecting over wharf, dock, etc.

Hospitals, etc.

27. For granting aid to any incorporated society or any association of individuals for the erection, establishment or equip-

Aiding erection, etc., of hospitals.

ment of public hospitals for the treatment of persons suffering from disease or from injuries.

Indigent Persons—Aid of.

Aiding indigent persons.

28. For aiding in maintaining any indigent inhabitant of, or person found in the municipality, at a house of refuge, hospital or institution for the insane, deaf and dumb or blind, or other public institution of a like character.

Power to take security for advances made to persons by way of charity.

(*a*) Where money is advanced by way of charity or relief to or expended for the benefit of a person who, although in destitute circumstances, is the owner of or interested in land the retention of which is necessary for a dwelling for him, the corporation may take a conveyance of or security on such land for the amount advanced or expended, and on the death of such person, or the surrender of the land by him to the corporation, the corporation may sell or dispose of the land and apply the proceeds in payment of the amount so advanced or expended, with interest thereon at the rate of six per cent. per annum, and the costs of the sale and the residue of such proceeds, if any, shall be paid to the executors, administrators or assigns of such person on demand.

Municipal Officers.

Appointing certain officers.

29. For appointing such pound-keepers, road commissioners, pathmasters, fence-viewers, overseers of highways, road surveyors, inspectors of sheep worried or killed by dogs, and other officers in addition to those specially mentioned in this Act and such servants as may be deemed necessary for the purposes of the corporation, or for carrying into effect the provisions of any Act of this legislature or by-law of the council.

Speakman v. Calgary (1908), 1 A.L.R. 454, 9 W.L.R. 264, and other cases referred to in notes to s. 246.

See notes to s. 8 as to police constables.

A pathmaster is a servant of the corporation: Stalker v. Dunwich (1888), 15 O.R. 342.

Members of a municipal council, appointed a committee to perform work for the council, are servants of the corporation while in the performance of the work, as well as persons employed by them to do the work: McDonald v. Dickenson (1897), 24 A.R. 31.

A medical health officer is not an employee or servant of the corporation: Macfie v. Hutchinson (1887), 12 P.R. 167; Forsyth v. Canniff (1890), 20 O.R. 478; though he may be an officer of the corporation in respect of duties imposed upon him by by-law of the council: per Galt, C.J., Ib. p. 479.

The fact that they belong to any literary, religious, scientific or political organization does not justify a municipal corporation in dismissing or reprimanding its employees, and a corporation will be restrained from holding an inquiry and making a report upon an accusation that can be of no benefit to matters within its jurisdiction or the administration of municipal business: Fortier v. Guerin (1910), 12 Que. P.R. 108.

Fixing fees, duties and security of.

30. For fixing their remuneration and prescribing their duties, and the security to be given for the performance of them.

Ontario Municipal Union.

Membership in union of municipalities.

31. For the corporation becoming a member of any union of Ontario municipalities for furthering the interests of municipalities and paying the fees for such membership and making contributions for the expenses of the union, and paying the expenses of delegates to any meeting of it or upon its business.

Public Parks and Drives.

Acquiring land for parks, etc.

Rev. Stat. c. 203.

32. For acquiring land for and establishing and laying out public parks, squares, avenues, boulevards and drives in the municipality or in any adjoining local municipality, and where there is no Board of Park Management for exercising all or any of the powers which are by *The Public Parks Act* conferred on Boards of Park Management.

Where land expropriated is in an adjoining municipality.

(*a*) A corporation which expropriates land in another municipality, under the powers conferred by this paragraph, shall put the land in an efficient state to be used, and open the same to the general public, for the purpose for which it was acquired, within a reasonable time after such expropriation, and shall maintain and keep the same in an efficient state of repair and shall provide police protection therefor.

A municipal corporation which owns a public park and building in it is not liable to a mere licensee for personal injuries sustained owing to want of repair of the building—at all events where knowledge of the want of repair is not shown: Schmidt v. Berlin (1894), 26 O.R. 54; Moore v. Toronto (1893), 26 O.R. 59 (n); Marshall v. The Industrial Exhibition Association and Toronto (1900-1), 1 O.L.R. 319, (1901) 2 O.L.R. 62; Soulsby v. Toronto (1907), 15 O.L.R. 13, 9 O.W.R. 871.

See also McPhee v. Toronto (1915), 9 O.W.N. 150, noted under s. 8; Halpin v. Victoria (1915), 21 B.C.R. 14, 23 D.L.R. 333, 7 W.W.R. 1058, also noted under s. 8.

In Hope v. Hamilton Park Commissioners (1901), 1 O.L.R. 477, it was held that ratepayers who are affected thereby only to the same extent as all other ratepayers could not bring an action ageinst the Park Commissioners of a city to set aside resolutions as to the management of a city park, and that such an action must be brought by the Attorney-General.

Accepting land dedicated.

33. For accepting and taking charge of land, within or without the municipality, dedicated as a public park for the use of the inhabitants of the municipality.

Rifle Associations—Militia.

Aid to rifle associations and militia.

34. For aiding any regularly organized rifle association or any association or corporation having for its object or one of its objects the promotion of military art, science or literature.

Remuneration.

35. For adding to the sum paid, during the period of annual or other authorized drill or when on active service, to any enlisted member of any corps of Active Militia organized within the municipality.

Equipment.

36. For providing military outfit or equipment for the members of such corps.

Sidewalks, etc.—Vehicles on.

Prohibiting vehicles on sidewalks, etc.

37. For prohibiting carriages, waggons, bicycles, sleighs and other vehicles and conveyances of every description, and what-

ever the motive power, or any particular kind or class of such vehicles or conveyances being upon, or being used, drawn, hauled or propelled along or upon any sidewalk, pathway or footpath, used by or set apart for the use of pedestrians, and forming part of any highway or bridge, boulevard or other means of public communication, or being in or upon any highway, boulevard, park, park-plot, garden or other place set apart for ornament or embellishment or for public recreation.

Victorian Order of Nurses.

Aid to Victorian Order of Nurses.

38. For granting aid to the Victorian Order of Nurses.

Water for Fire Purposes.

Contracts for supply of water.

39. For contracting for a supply of water within the municipality for fire purposes and other public uses, from hydrants or otherwise as may be deemed advisable; and for renting hydrants for any number of years not, in the first instance, exceeding ten; and for renewing the contract from time to time for periods not exceeding ten years, as the council may deem proper; or for purchasing or erecting hydrants necessary for any of such purposes.

A water company which, in the case of a fire, does not supply water for fire purposes of the pressure stipulated for by its contract with a municipal corporation is not liable to a property owner in the municipality for loss occasioned by the fire, but, whatever liability the company is under, it is a liability to the corporation alone: Belanger v. St. Louis (1912), 8 D.L.R. 601.

Watering Streets.

Contracts with street railway companies for street watering.

40. For contracting with a street railway company for watering any of the highways for any number of years, not exceeding five, and for renewing such contract from time to time for a period not exceeding five years. 3-4 Geo. V. c. 43, s. 398.

399. BY-LAWS MAY BE PASSED BY THE COUNCILS OF LOCAL MUNICIPALITIES.

Bathing in Public Waters.

Bathing.

1. For prohibiting or regulating the bathing or washing of the person in any public water in or near the municipality.

Charivaries.

Charivaries.

2. For prohibiting charivaries and other like disturbances of the peace.

Closet Accommodation for Workmen.

Conveniences to be provided by builders.

3. For requiring the owners, contractors or master workmen engaged in the erection or construction of buildings or public works to provide, for the use of the workmen employed in such erection or construction, closet accommodation, to be approved of by the medical health officer, in connection with them.

Cows and other Animals—Keeping of.

Keeping of cows and other animals.

4. For regulating the keeping of cows, goats, swine and other animals.

5. For prohibiting the keeping of cows, goats, swine or other animals, except horses or mules, within the municipality or within defined areas of it.

Contagious Diseases.

Contagious diseases.

6. For providing blank forms for recording and reporting cases of contagious or infectious disease; for placarding houses wherein such cases exist, and for taking such measures as may be deemed necessary for preventing the spread of such diseases.

Cruelty to Animals, etc.

Cruelty to animals.

7. For preventing cruelty to animals and the destruction of birds.

Disorderly Houses.

Disorderly houses, etc.

8. For suppressing disorderly houses and houses of ill-fame.

It is open to question whether this provision is *intra vires* of a provincial legislature, as the subject is dealt with in the Criminal Code: See notes to s. 249 (1) (Constitutionality).

Disqualification of Electors not Paying Taxes.

Disqualifying electors in arrear for taxes.

9. For disqualifying from voting an elector who has not on or before the 14th day of December next preceding the election paid all municipal taxes due by him.

Drainage of Cellars, Privy Vaults, etc.

Construction of cellars, drains, etc.

10. For regulating the construction of cellars, sinks, cess-pools, water closets, earth closets, privies and privy vaults; for requiring and regulating the manner of the draining, cleaning and clearing and disposing of the contents of them.

A by-law passed to regulate the cleansing of privy-vaults and imposing a fine of not less than $1 or more than $50 for a breach of its provisions, was held to be valid, as it was one under The Municipal Act, and not under The Public Health Act, which restricted the penalty to $20: In re Mackenzie and Brantford (1884), 4 O.R. 382.

Dry earth closets.

11. For requiring the use within the municipality or a defined area of it of dry earth closets.

Expenses of cleaning closets, etc.

12. For providing that the cleaning and disposing of the contents of cesspools, water closets, earth closets, privies and privy vaults shall be done exclusively by the corporation.

(*a*) For such purpose the corporation, its officers and servants shall have all the powers of the Local Board of Health and its officers and servants, and such expense shall be recoverable in the manner provided by section 500.

Filling up, draining, etc., grounds, yards, etc.

13. For requiring and regulating the filling up, draining, cleaning, clearing of any grounds, yards and vacant lots and the altering, relaying or repairing of private drains.

A municipal by-law which makes the owners of houses responsible for the unsanitary condition of yards leased by them is *intra vires:* Beauchamp v. Montreal (1905), 7 Que. P.R. 174.

Regulations for sewerage, etc.

14. For making any other regulations for sewerage or drainage that may be deemed necessary for sanitary purposes. 3-4 Geo. V. c. 43, s. 399, pars. 1-14.

Egress from Buildings.

Doors of public buildings. Rev. Stat. cc. 235, 236, 229.

15. For regulating, subject to the provisions of *The Egress from Public Buildings Act* (*The Theatres and Cinematographs Act*) and *The Ontario Factories Acts*:

(*a*) The size and number of doors, aisles, halls and stairs in and other means of egress from hospitals, schools, colleges, churches, theatres, halls, or other buildings used as places of worship, or of public resort, or amusement, or for public meetings, and street gates leading to them;

(*b*) The construction and width of stairways in such buildings, and in factories, warehouses, hotels, boarding and lodging houses;

(*c*) The materials of which and the manner in which stairs and stair railings shall be constructed, and the strength of walls, beams and joists and their supports in all such buildings; and

(*d*) For requiring the production of the plans of the buildings mentioned in this paragraph now erected or which it is proposed to erect, and for prohibiting the use or erection of them until the provisions of the by-law are complied with to the satisfaction of the architect of the corporation or an officer appointed for the purpose. 3-4 Geo. V. c. 43, s. 399, par. 15; 5 Geo. V. c. 34, s. 23.

The words in brackets were added by 5 Geo. V. c. 34, s. 23.

Obstruction of halls, aisles, etc.

16. For prohibiting and preventing the obstruction by persons or things of the halls, aisles, passage-ways, alleys or approaches in or leading to any such building during the occupation of it by a public assemblage.

Powers of police officers as to seeing that by-laws enforced.

(*a*) While any building mentioned in clause (*a*) of paragraph 15 in a city or town is occupied by a public assemblage, the chief constable or any constable of the city or town may enter it to see that the by-law is not being violated, and may require the removal of any obstruction or of any person standing, sitting, or otherwise occupying any hall, aisle, passage-way, alley or approach, except for passing to and fro.

Electricity—Transmission of.

Laying of pipes or conduits on streets. Rev. Stat. c. 197. Transmission of electricity.

17. Subject to *The Municipal Franchises Act* for authorizing any person supplying electricity for light, heat and power, to lay down pipes or conduits for enclosing wires for the transmission of electricity under the highways or public squares, or to carry wires for the transmission of electricity or to erect telegraph, and telephone poles and wires across or along any highway or public square, on such terms and conditions as the council may deem expedient.

(*a*) A by-law shall not be passed under this paragraph in violation of any agreement of the corporation.

See also notes to pars. 50-1.

Where authority is conferred by the legislature upon a company to use streets, highways and public places of a municipality for conveying light, heat or power "only upon and subject to such agreement in respect thereto as shall be made between the company and the said municipalities respectively, and under and subject to any by-law or by-laws of the councils of the said municipalities passed in pursuance thereof," the power vested in the corporation of the municipality cannot be effectively exercised otherwise than by a corporate act, that is, by an act done by the corporation itself under the authority of its municipal council, not necessarily by by-law, and the acquisition by a company by mere active or passive acquiescence on the part of the officials or servants of the municipality of the right to use the streets, highways and public places without the consent or permission of the corporation or the making of the agreement was not contemplated by the legislature: Toronto Electric Light Company v. Toronto (1915), 33 O.L.R. 267, 21 D.L.R. 859, (reversing (1914) 31 O.L.R. 387), affirmed by the Judicial Committee of the Privy Council, (1916) 38 O.L.R. 72, 31 D.L.R. 577. In this case Ghee v. Northern Union Gas Company (1899), 158 N.Y. 510, 513, was approved and applied.

See also Calgary v. Canadian Western Natural Gas Company (1915), 25 D.L.R. 807, 809, 32 W.L.R. 558, 9 W.W.R. 252, in which it was said by Ives, J., dealing with a somewhat similar provision as to consent, that "the effect of the clause is to make necessary the city's approval to the exercise of the defendants' right upon or along the city's property, and such approval should be given, I believe, by some corporate or legislative act."

Explosives—Keeping, Manufacturing and Storing of.

Regulating, storing and transportation of explosives.

18. For regulating the keeping, storing and transporting of:

(*a*) Dynamite, dualin, nitro-glycerine, or gunpowder;

(*b*) Petroleum, gasoline or naphtha; and

(*c*) Other dangerous or combustible, inflammable or explosive substances;

See also par. 27.

A city by-law provided that no larger quantity than three barrels of rock-oil, coal oil or other similar oils, nor any larger quantity than one barrel of crude oil, burning fluid, naphtha, benzole, benzine, or other combustible or dangerous material, should be kept at any one time in a house or shop in the city except under certain limitations. The by-law was passed under the authority of subs. 17 of s. 542, R.S.O. 1897, c. 223. The section was headed "Storing and Transporting Gunpowder," and provided "for regulating the keeping and storing of gunpowder and other combustible or dangerous materials," and was one of a group of sections under division 6 of the Act, headed "Protection of Life and Property," and subdivision 3 of the division, which included s. 542, was under the heading "Prevention of Fires."

The defendant was convicted of a breach of this by-law in keeping more than the prescribed quantity of petroleum or naphtha at one time in a house or shop in the city, and it was held (1) that the words "other combustible or dangerous materials" were not limited by the *ejusdem generis* rule to gunpowder or other similar substances, but would include the substance set out in the by-law; and (2) that this legislation was not superseded by The Petroleum Inspection Act (1899), 62 & 63 Vict. c. 27 (D), dealing with the subject, being expressly made conformable to that Act.

Rex v. McGregor (1902), 4 O.L.R. 198.

Fees for support of magazines.

19. For regulating and providing for the support by fees of magazines belonging to private persons for the storage of the substances mentioned in clause (*a*) of paragraph 18, and for requiring them to be stored in such magazines.

Erecting and maintaining magazines.

20. For erecting and maintaining within or without the limits of the municipality magazines for the storage of the substances mentioned in clause (*a*) of paragraph 18, and for acquiring the land necessary for that purpose, and for requiring such substances to be stored in such magazines.

Limiting quantity to be kept.

21. For limiting the quantity of the substances mentioned in clause (*a*) of paragraph 18, which may be kept in any place other than such a magazine, and for regulating the manner in which the same are to be kept or stored.

22. For prohibiting or regulating the establishment within the municipality of factories or other places for the manufacture or storage of any of the substances mentioned in clause (*a*) of paragraph 18.

Prohibiting manufacture of explosives.

23. For requiring the submission of plans of the premises, including the buildings upon or in which it is proposed that such manufacture or storage shall take place, and the approval of them by the council before the manufacture or storing is commenced.

Submission of plans of premises.

24. For requiring such buildings to be surrounded by walls or fences and for regulating the height and description of such walls or fences and their distance from such buildings, and also the distance from any other building, at which such manufacture or storage may be carried on.

Height and description of fences around buildings.

25. For regulating the carrying on of the business of manufacturing or storing such substances, whether the business has been heretofore or shall be hereafter established, and prescribing the precautions to be taken for the prevention of fires and accidents from the combustion or explosion of such substances.

Regulating business of manufacturing explosives.

26. For granting licenses for the carrying on of the business of manufacturing such substances or for storing them in quantities of more than twenty-five pounds, and prescribing the time, not exceeding five years, during which the licenses shall remain in force.

Licenses for carrying on business.

(*a*) The license fee shall not exceed $25 a month for every month in which such business shall be carried on.

27. For prohibiting or regulating the keeping or storing of gasoline or benzine, and prescribing the materials of which the vessels containing it shall be composed, and the classes of buildings in which it may be stored or kept for sale, and for making regulations for the prevention of fires and accidents from the combustion or explosion of such substances.

Prohibiting, etc., storing of gasoline, etc.

See note to par. 18.

Fences.

Height and kind of fence.

28. For prescribing the height and description of lawful fences.

Along highways.

29. For prescribing the height and description of, and the manner of maintaining, keeping up and laying down fences along highways or parts thereof; and for making compensation for the increased expenses, if any, to persons required so to maintain, keep up or lay down any such fence.

See Brohm v. Somerville (1906), 11 O.L.R. 588, 7 O.W.R. 721, noted under s. 8 (Capacity of a municipal corporation to contract and its liability on certain contracts).

Division fences, apportionment of cost. Rev. Stat. c. 90.

30. For determining how the cost of division fences shall be apportioned; and for providing that any amount so apportioned shall be recoverable under *The Ontario Summary Convictions Act;*

Rev. Stat. c. 259.

(*a*) Until a by-law is passed, *The Line Fences Act* shall apply.

Barbed wire fences.

31. For requiring proper and sufficient protection against injury to persons or animals by fences constructed wholly or partly of barbed wire or any other barbed material to be provided by the owner of the land; and in towns and cities for prohibiting the erection along the highways of fences made wholly or partly of barbed wire or any other barbed material.

In Hillyard v. Grand Trunk Railway Company (1885), 8 O.R. 583, it was held that, in view of the provision then in force corresponding with this paragraph, which seemed to sanction them and empower municipalities to provide against injury resulting from them, barbed wire fences constructed by the defendants upon an ordinary country road along the line of their railway could not be treated as a nuisance, no by-law of the locality in which the accident complained of in this case having been passed respecting fences of the kind, and that evidence of the common use of fences of the kind in other townships, and that other municipalities held out inducements to erect them, was admissible as showing that they were not considered dangerous or a nuisance.

See also articles in 28 C.L.J. 169 and 39 Sol. Jour. 757, and Fenna v. Clare, L.R. (1895) 1 Q.B. 199, 11 T.L.R. 119, in which a row of sharp spikes on the top of a wall, 18 inches high, adjoining a highway, was found by the jury to be undoubtedly a dangerous nuisance.

32. For requiring the owners of land to erect and maintain a water gate where a fence crosses an open drain or watercourse.

Water gates.

Fire—Prevention of Accidents by.

33. For securing against accident by fire the inmates and employees and others in factories, hotels, boarding-houses, lodging-houses, warehouses, theatres, music halls, opera houses, and other buildings used as places of public resort or amusement.

Providing against accidents by fire.

Fire Escapes.

34. Subject to the provisions of any other Act requiring fire escapes, for compelling the owners and occupants of buildings more than two storeys in height, except private dwellings, to provide proper fire escapes therefor in such places, of such pattern and mode of construction as may be deemed proper; and for prohibiting the occupation of any such building unless or until such fire escapes are provided.

Compelling use of fire escapes.

See Birch v. Stephenson (1915), 33 O.L.R. 427, 22 D.L.R. 404, affirmed by Supreme Court of Canada, 2nd May, 1916, and see also as to presumption, in case of death, that it was the result of the failure to provide fire escapes, etc., The Fire Accidents Act, 1915, 5 Geo. V. c. 41, s. 2, which was passed in consequence of the decision in that case.

Fires in Open Air.

35. For prescribing the times during which fires may be set in the open air, and the precautions to be observed by persons setting out fires.

Prescribing times for setting fires and precautions.

Firearms and Fireworks.

36. For prohibiting or regulating the discharge of guns or other firearms; and the firing and setting off of fireballs, squibs, crackers, or fireworks.

Discharge of firearms, fireworks, etc.

Where an infraction of a by-law forbidding the setting off of fireworks in the public streets is violated, the corporation, not being bound to see to its enforcement, is under no liability to a person who has suffered injury owing to a breach of the by-law having been committed: Brown v. Hamilton (1902), 4 O.L.R. 249.

See also Jamieson v. Edmonton (1916), 9 A.L.R. 253, 27 D.L.R. 168, 33 W.L.R. 857, 9 W.W.R. 1287, noted under s. 460 (1); and Ratteau v. Drosse (1905), Q.R. 28 S.C. 208, noted under s. 8.

Food.

Regulating the delivery or exposure for sale of meat, etc.

37. For regulating the delivery and exposure for sale upon a highway or in a market or public place of meat, poultry, game, flesh, fish or fruit, or the carcass of any animal.

Inspection of milk and provisions.

38. For appointing inspectors, and for providing for the inspection of meat, poultry, fish and natural products offered for sale for human food, whether on the streets or in public places, or in shops.

Seizing tainted food.

39. For authorizing the seizing and destroying of tainted and unwholesome articles of food. 3-4 Geo. V. c. 43, s. 399, pars. 16-39.

Food and Fuel.

Power to buy and sell fuel and food.

39*a*. With the approval of the Municipal Board and within the limitations and restrictions and under the conditions prescribed by order of the board.

i. For buying and storing fuel and such articles of food as may be designated by order of the board and for selling the same to dealers and residents of the municipality;

ii. For acquiring land, erecting buildings, establishing, conducting and maintaining depots, stores, warehouses and yards and purchasing machinery, plant, appliances and equipment necessary for such purposes;

iii. For appointing officers, clerks and servants to manage and conduct such businesses;

iv. For making rules and regulations and doing all such other acts and things as may be necessary for the full and proper carrying out of such powers.

v. For borrowing from time to time by the issue of debentures payable in not more than ten years from the date of issue the money necessary for such purposes.

(*a*) The by-law need not be assented to by the electors but shall require a vote of two-thirds of all the members of the council.

(*b*) After the by-law has been approved by the Municipal Board it shall also be approved by the Lieutenant-Governor in Council and may then be finally passed by the Council. 7 Geo. V. c. 42, s. 12 (2).

Gambling Houses, etc.

Gaming.

40. For suppressing gambling houses, and for seizing and destroying faro-bank, rouge et noir, or roulette tables, and other devices for gambling found in them.

It is open to question whether this provision is *intra vires* of a provincial legislature, as the subject is dealt with in the Criminal Code.

This paragraph is pointed at houses where gaming or gambling is practised and the house is kept for that purpose, and a by-law purporting to be made under the authority of the paragraph which provided that no person should permit any game of chance or hazard with cards to be played for money within any house was held to be *ultra vires:* Rex v. Spegelman (1905), 9 O.L.R. 75, 9 Can. Cr. Cas. 169.

No question seems to have been raised in this case as to the legislation being *ultra vires* as dealing with criminal law.

See also cases referred to in notes to s. 249 (1) (Constitutionality).

Gas Works, Tanneries, Distilleries, etc.

Gas works, distilleries, etc.

41. For prohibiting or regulating the erection or continuance of gas works, tanneries, or distilleries or other manufactories or trades which in the opinion of the council may prove to be or may cause nuisances.

Graves—Protection of.

Protecting graves.

42. For prohibiting the violation of cemeteries, graves, tombs, tombstones, or vaults where the dead are interred.

Hoists, Scaffolds, etc.

Construction of hoists, scaffolding, etc.

43. For regulating and inspecting the construction and erection of hoists, scaffoldings and other apparatus and appliances used in erecting, repairing, altering or improving buildings, chimneys, or other structures; and for making regulations for the protection and safety of workmen and others employed thereon; and for appointing inspectors of scaffolding.

[*As to appointment of inspectors under The Buildings Trades Protection Act and as to additional scaffold regulations, see Rev. Stat. c.* 228, *ss.* 3 *and* 7.]

Manufactures and Trades.

Noxious manufactures and trades.

44. For regulating manufactures and trades which in the opinion of the council may prove to be or may cause nuisances.

Noises.

Ringing of bells, etc.

45. For prohibiting or regulating the ringing of bells, the blowing of horns, shouting and unusual noises, or noises calculated to disturb the inhabitants.

"Calculated to disturb the inhabitants" is not synonymous with "creating a disturbance." "Calculate is a word which, it is said, must refer to the future, and it is frequently used with the meaning to intend or to expect a certain event or act. It is in this latter or irregular sense the word is used in the statute; or perhaps it was used as meaning the making of a noise which would be likely to disturb the inhabitants, whether so intended or not by the performer": per Wilson, C.J., in Reg. v. Martin (1886), 12 O.R. 800, 802-3. See also Reg. v. Nunn (1884), 10 P.R. 395.

Nuisances.

Nuisances.

46. For prohibiting and abating public nuisances.

Article 404 of the new Municipal Code of Quebec empowers local corporations:—

"To define what constitutes a nuisance, to suppress the same, and to impose fines upon persons who create nuisances or allow them to continue to exist."

In the other provinces which authorize municipal councils to legislate with regard to nuisances and their abatement, the enactments are similar to par. 46.

The council of a town has no power under s. 631 (*a*) of The Manitoba Municipal Act, which is substantially the same as this paragraph, to define what constitutes a nuisance: In re Dupuis (1908), 17 Man. L.R. 416, 7 W.L.R. 699.

A by-law of a council imposing penalties for sending out smoke and noxious odours has no force outside the limits of the municipality, and the penalty cannot be enforced against a person carrying on a manufacturing business in an adjoining municipality: St. Paul v. Cook (1902), Q.R. 22 S.C. 498.

In the same case it was held that the plaintiffs had a right of action to prohibit any person from allowing emanation of smoke or unwholesome odours, even when the establishments objected to are in adjacent municipalities, if such municipalities refuse or neglect to abate the nuisance.

Authority under The Highway Act (1896), 59 Vict. c. 21, s. 22, to sell the work of removing an obstruction upon a public road is not limited to a case where the owner of an obstruction is unknown: Winslow v. Dalling (1899), 1 N.B. Eq. 608.

Under a similar law of British Columbia, it was held that a municipal council may impose penalties for obstructing public thoroughfares by congregating on them in crowds and for refusing to disperse when so requested by the police, for such an obstruction is a public nuisance at common law: Rex v. Taylor (1909), 14 B.C.R. 235, 11 W.L.R. 20.

Where a municipal council had statutory authority to declare by resolution or by-law any building, structure or erection of any kind a nuisance and dangerous to the public safety or health, and, as might by the by-law or resolution be directed, order that the same should be removed, pulled down or otherwise dealt with by the owner, agent, lessee or occupant as the council might determine, and after a prescribed public notice and service on the owner, agent, lessee or occupant in default of compliance with the order within a prescribed period to order such removal, pulling down or other dealing with the same by any officer of the corporation at the cost of the owner, it is not necessary that two resolutions should be passed, and that an order for the removal, pulling down or otherwise dealing with the building in case of default might be incorporated in the resolution declaring the building to be a nuisance and ordering that it be pulled down by the owner: Horne v. Vancouver (1911), 19 W.L.R. 654 (B.C.).

Where a municipal by-law provides that if, after notice by a municipal officer, the owner of a dangerous structure fails to comply with the requisition in the notice, the municipal officer may order its demolition, and, upon default of demolition within the time specified in the order, that the officer may cause it to be demolished, it is necessary that all conditions precedent to the exercise of the power of demolition be strictly complied with, and, therefore, where the notice of the officer failed to give definite orders with regard to the nature of the demolition required, a subsequent entry by him upon the property and demolition of the building is unlawful: Riopelle v. Montreal (1911), 44 S.C.R. 579 (Que.).

See also as to barbed wire fences, Hillyard v. Grand Trunk Railway Company (1885), 8 O.R. 583, and other references in notes to par. 31.

Hauling dead horses, etc., through the streets in daylight.

47. For prohibiting the hauling of dead horses, offal, night soil or any other offensive matter or thing along any highway during the hours of daylight.

Placards, etc.—Indecent.

Indecent placards, etc.

48. For prohibiting the posting or exhibition of placards, play bills, posters, writings or pictures or the writing of words, or the making of pictures or drawings, which are indecent or may tend to corrupt or demoralize, on any wall or fence or elsewhere on a highway or in a public place.

Plays—Immoral or Indecent.

Immoral plays in theatres.

49. For prohibiting the production or giving of an immoral or indecent play or performance in any theatre, hall or other public place of amusement or entertainment, and for authorizing the chief constable, the deputy chief constable or any inspector of police, or any officer or person specially detailed for that purpose, to enter any theatre, hall or other place of public amusement or entertainment, and if at his request such play or performance is not forthwith stopped, to apprehend the performers without warrant, and to take them as soon as practicable before a police magistrate or a justice of the peace.

Poles and Wires.

Electric light, etc., poles and wires. Rev. Stat. c. 197.

50. Subject to *The Municipal Franchises Act* for regulating the erection and maintenance of electric light, power, telegraph and telephone poles and wires and poles and wires for the transmission of electricity upon the highways or elsewhere within the municipality.

By-laws for laying pipes or conduits for electric wires.

51. Subject to *The Power Commission Act* for constructing or laying down pipes or conduits for enclosing wires for the trans-

mission of electricity under, or for erecting towers or poles for the support of wires for such purpose across or along any highway or public place, and for entering into agreements with electric light or power, telegraph or telephone companies for the use by them of such pipes, conduits or poles, for such consideration and on such terms and conditions as may be agreed upon. Rev. Stat. c. 39.

See also notes to par. 17.

In Toronto v. Bell Telephone Company (1902), 3 O.L.R. 465, 1 O.W.R. 192, (1903) 6 O.L.R. 335, 2 O.W.R. 750, L.R. (1905) A.C. 52, 21 T.L.R. 45 it was held that the council of a municipality had not, under 45 Vict. c. 95 (D), the right to refuse the company access to streets through which it may propose to carry its line or lines, but that the Act may give the council a voice in determining the position of the poles in streets selected by the company and possibly in determining whether the line in any particular street is to be carried overhead or underground.

Since this decision new provisions have been made with respect to the right of telephone companies, as well as telegraph companies and companies for the conveyance of light, heat, power or electricity, to break up and open highways, squares or other public places for the purposes of their systems, except for the construction, maintenance or operation of long distance lines or services or trunk lines or services connecting two or more exchanges in a city, town or village: R.S.C. c. 37, ss. 247, 248; and now there is no right to construct, maintain or operate lines of telephone upon, along, across or under any highway, square, or other public place within the limits of any city, town or village incorporated, or otherwise, without the consent of the municipal council having jurisdiction over them, or, if that consent cannot be obtained, without the leave of the Board of Railway Commissioners for Canada.

The powers of a municipal council under 43 Vict. c. 64 (D) and 45 Vict. c. 95 (D) to regulate the mode of user of the streets must be exercised in good faith in the interests of the public and of the municipaiity, and not for ulterior purposes: Bell Telephone Company v. Owen Sound (1904), 8 O.L.R. 74.

The power to permit the erection of electric power poles and wires does not give or imply the legal power to interfere with the property of others upon the streets, and the addition of the power to regulate such erection and maintenance confers no such right: Canadian Pacific Railway Company v. Falls Power Co. (1907), 10 O.W.R. 1125, 1130.

An electric light company placed poles upon a highway without the permission of the council. The council passed a by-law allowing them to remain on payment of a rental, the execution of a bond to indemnify the corporation against actions for damages, and payment of the cost of obtaining legislation to confirm the by-law. This the company failed to do, and it was held that the company had no rights upon the highways without legislative sanction: Bucke v. New Liskeard (1909), 1 O.W.N. 123, 14 O.W.R. 841.

A power company, having legislative authority to erect its poles and wires across highways, may lawfully erect them over a canal vested in a municipal corporation so long as its usefulness for the purpose of navigation is not impaired: Dundas v. Hamilton Cataract Power Company (1911), 2 O.W.N. 517.

Where a power company has statutory authority to construct, maintain and operate lines of wire and poles, and therewith convey power through, over, along or across any public highway, the company may go upon highways for the purpose of their undertaking without permission from the municipal corporation having control of such highways: Toronto and Niagara Power Company v. North Toronto (1911), 24 O.L.R. 537, (1912) 25 O.L.R. 475, 5 D.L.R. 43, 32 C.L.T. 826, 23 O.W.R. 85, L.R. (1912) A.C. 834, 28 T.L.R. 563.

This power is now subject to ss. 247-8, R.S.C. c. 37.

It was held in Haldimand v. Bell Telephone Company (1911-12), 25 O.L.R. 467, 2 D.L.R. 197, 21 O.W.R. 194, that the Bell Telephone Company had not the right, without the consent of the municipal corporation, in the case of local lines, and without a week's notice or the direction of the corporation or its officer, in the case of long distance or trunk lines, to erect its poles and wires upon a bridge forming part of a highway and built by the corporation.

An electric light company having authority under a by-law of a council to erect poles and wires along the streets, on obtaining the consent by resolution of the council, and to erect them on lanes, in which case the location of the poles was to be subject to the direction and approval of the council.

Held, that the company might string wires *across* a street without the consent of the council and that the direction and approval should not be unreasonably withheld, and that, having been so withheld, the company might proceed with the erection of its poles without such direction and approval: Walkerville v. Walkerville Light and Power Company (1913), 5 O.W.N. 429.

A corporation, which has under a general by-law granted permits to a company to erect poles in its streets and public places, cannot, after the permits have been acted upon, require the removal of the poles on the ground that the permits were void because issued without the adoption of a by-law in each instance: Winnipeg Electric Railway Company v. Winnipeg, L.R. (1912) A.C. 355, 4 D.L.R. 116, reversing (1910) 20 Man. L.R. 337, 16 W.L.R. 62.

The consent of a municipal council to enter and place poles upon a highway, required by the Railway Act, R.S.C. c. 37, s. 247, may be presumed from long usage in the absence of objection: Young v. Brandon (1915), 25 Man. L.R. 810, 815, 25 D.L.R. 296, 32 W.L.R. 231, 9 W.W.R. 62, 914.

On the termination of the "franchise" of a company for an electric light system, the company must cease to do business in the municipality, and remove its plant and appliances from the streets and other places, public and private, and, if it fails to do so within a reasonable time, the corporation may either take proceedings to enforce the removal of them or, at all events, of such of them as interfere with the reasonable use of the streets and other public places by itself or the public, and may itself remove them, doing no unnecessary damage: Weeks v. Vegreville (1915), 25 D.L.R. 795, 32 W.L.R. 450, 9 W.W.R. 165 (Alta.), citing City Railway Company v. Citizens Street Railway Company (1898), 52 N.E.R. 157, Plymouth v. Chesnut Hill, etc., R. Company (1895), 168 Penn. St. 181, 32 Atl. R. 19; Louisville Trust Company v. Cincinnati (1896), 76 Fed. R. 296; Clinton v. Clinton and Lyons Horse R. Company (1873), 37 Iowa 61; Laighton v. Carthage (1909), 175 Fed. R. 145; Cleveland Electric R. Company v. Cleveland (1906), 204 U.S. 116; Dillon on Municipal Corporations, 5th ed., s. 1315, 36 Cyc. pp. 1275 (n. 7), 1376 (n. 14).

Pounds, etc.

Providing pounds.

52. For providing sufficient yards and enclosures for the safe keeping of such animals as it may be the duty of the poundkeeper to impound.

Animals running at large.

53. For prohibiting or regulating the running at large or trespassing of animals, other than dogs, and for providing for impounding them and for causing them to be sold, if they are not claimed within a reasonable time, or if the damages, fines and expenses are not paid according to law.

A by-law passed by a township council prohibited the running at large of cattle, horses, sheep, swine or geese, and it was amended by a by-law which permitted milch cows, heifers and steers to graze on the highways on payment of an annual fee of $2 for each animal.

A motion was made to quash the amending by-law, and it was dismissed, the Court being of opinion that, as the council had jurisdiction over the highway, it had the right to let cattle graze on them and to "make a charge therefor." The Chancellor, in stating the opinion of the Court, referred to Coverdale v. Charlton L.R. (1878), 4 Q.B.D. 104, 121-3, as an English authority precisely in point.

Ross v. East Nissouri (1900-1), 1 O.L.R. 353.

A by-law which prohibited the running at large of certain animals, but allowed milch cows and cattle, with certain exceptions, to run at large and to loiter or stop on the roads and highways, was held to be valid in so far as it allowed the running at large upon the roads and highways: Fensom v. C.P.R. Co. (1903-4), 7 O.L.R. 254, (1904) 8 O.L.R. 688.

In Nova Scotia it is not lawful to suffer cattle to run at large upon the public highway. The common law rule on the subject is still in force, and has not been affected by the provincial statutes in respect to fences and the impounding of cattle or the establishment of closed districts. A "closed district" is a district as to which a by-law of the council may be passed prohibiting cattle from going at large: Dickie v. Gordon (1905), 39 N.S. 311.

Statutory authority to pass by-laws "for limiting the right to recover damages for any injury done by cattle . . . trespassing on land, or for the trespass, to cases in which the land is enclosed by a fence of the nature, kind and height required by the by-law," does not extend to cases where cattle trespass from a highway when they are not lawfully there: Jack v. Stevenson (1910), 19 Man. L.R. 717, 13 W.L.R. 486; and where, under the same statutory authority, a by-law was passed depriving the owner of land of the right to damages "unless he shall have surrounded his lands and premises with a lawful fence, as defined by by-law of this municipality," and no by-law was proved which showed what should constitute a lawful fence, it was held that the owner was entitled to recover his damages, although his land was entirely unfenced: Dalziel v. Zastic (1910), 19 Man. L.R. 353, 13 W.L.R. 488.

It is not a negligent or wilful act or omission, within the meaning of s. 294 (4) of The Railway Act, R.S.C. c. 37, that cattle are running at large where by the by-law of the municipality they are permitted to run at large: Greenlaw v. Canadian Northern Railway Company (1913), 23 Man. L.R. 410, 12 D.L.R. 402, 24 W.L.R. 509, 15 Can. Ry. Cas. 329, 49 C.L.J. 552, 4 W.W.R. 847.

Where horses are at large upon a highway within half a mile of its intersection with a railway at rail level, contrary to s. 29 of The Railway Act, R.S.C. c. 37, and having got at large through the negligence of the owner, he cannot recover for an injury done to the horses by the railway company, notwithstanding that there is a by-law of the municipality permitting horses to run at large: Koch v. Grand Trunk Pacific Railway Company (1916), 9 S.L.R. 256, 32 D.L.R. 393, 34 W.L.R. 876, 10 W.W.R. 1115.

A by-law providing that animals shall not be allowed to run at large during certain hours of the day must not be read as enacting, by implication, that they are permitted to run at large during other hours of the day: Doble v. Canadian Northern Railway Company (1916), 27 D.L.R. 115, 34 W.L.R. 298, 10 W.W.R. 427 (Man.).

A similar conclusion was reached in Watt v. Drysdale (1907), 17 Man. L.R. 15, 6 W.L.R. 234, which was the case of a by-law prohibiting the running at large of certain animals, which it was contended, by implication, permitted all other animals to run at large.

In the same case it was held that a municipal council had no power to provide by by-law that there should be no liability for a trespass to unfenced lands by cattle running at large.

Appraising the damages.

54. For appraising the damages to be paid by the owners of animals impounded for trespassing, contrary to law or the by-laws of the municipality.

Compensation for impounding animals.

55. For determining the compensation to be allowed for services rendered in carrying out the provisions of any Act, with respect to animals impounded or distrained and detained in the possession of the distrainor. 3-4 Geo. V. c. 43, s. 399, pars. 40-55.

Seeds—Purchase and Donation of.

Purchase and donation of vegetable and root seeds.

55*a*. For purchasing supplies of any or all kinds of vegetable and root seeds and donating them to residents of the municipality on such terms and conditions as may be fixed by the by-law, for the purpose of promoting and aiding the production of crops from the planting of such seeds. 7 Geo. V. c. 42, s. 13.

Sewers—Extension of.

Extension of sewers into adjoining municipality.

56. Where a local municipality is so situate that it is necessary, in order to procure an outlet for a sewer or to connect it with a sewage farm, to extend it into or through an adjacent municipality, for so extending it, or for extending and connecting it with any existing sewer of such adjacent municipality, upon such terms and conditions as may be agreed upon, or in case of failure to agree, as may be determined by arbitration.

Arbitrators to determine conditions on which connections may be made.

(*a*) Where the council of the adjacent municipality objects to allow such extension or connection, the arbitrators shall determine not only the terms and conditions upon which the extension or connection is to be made, but also the location of the sewage farm, filtering plant or artificial means of sewage disposal which is contemplated, and whether the extension or connection should be allowed to be made.

Rev. Stat. c. 260.

(*b*) Nothing in this paragraph shall authorize the making of an open drain or sewer, or affect the provisions of *The Ditches and Watercourses Act*, or limit any of the powers conferred on townships by that Act.

Signs, etc.

Posters.

57. For prohibiting or regulating the erection of signs or other advertising devices, and the posting of notices on buildings or vacant lots.

Pulling down of signs and notices.

58. For prohibiting the pulling down or defacing of signs or other advertising devices and notices lawfully affixed.

Slaughter Houses.

Establishing slaughter houses.

59. For establishing and maintaining public slaughter houses.

Prohibiting and regulating.

60. For prohibiting or regulating and inspecting the erection or continuance of slaughter houses, and for prohibiting the slaughter of animals intended for food, except in slaughter houses designated in the by-law.

(*a*) In towns, villages and townships this clause shall not apply to the slaughter of animals for the use of the person killing them or of his family.

A by-law prohibiting the keeping of a slaughter-house within the limits of a municipality without the special resolution of the council is bad (In re Nash and McCracken (1873), 33 U.C.R. 181), the reason for the decision being that the by-law permitted favouritism by the council, and might be exercised in restraint of trade or used to grant a monopoly, and all persons, therefore, who followed or desired to follow the trade were not placed or might not be placed or were liable to be not placed on the same footing.

See also Milk Farm Products and Supply Company v. Buist (1915-6), 35 O.L.R. 325, 333, 336, 26 D.L.R. 459, in which that case was treated as well decided.

Snow and Ice—Removal of.

Clearing away snow and ice from roofs and sidewalks.

61. For requiring the occupants of buildings adjoining a highway in the municipality or in any defined area of it to clear away

and remove the snow and ice from the roofs of such buildings and from the sidewalks adjoining their premises, and for regulating the times when and the manner in which the same shall be done.

Article 417 of the new Municipal Code of Quebec contains a provision somewhat similar to this paragraph.

The cases in the United States and in Ontario are conflicting as to the liability at common law of the owner or occupant of a building abutting on a highway for injuries caused to a person lawfully using the highway, by snow and ice falling from the roof of the building into the highway.

In Massachusetts the rights of a traveller on the highway are held to be the same as if he owned the soil in fee simple, and the liability for injuries sustained by a traveller, in consequence of snow or ice falling from the roof of a building abutting on the highway, is held to depend on the same rules and is to be decided on the same principles as if it raised a question between adjoining proprietors in which the lands or buildings of one were injured by the manner in which the other had seen fit to occupy or use his own lands and buildings.

Shipley v. Fifty Associates (1869), 101 Mass. 251, 253, (1870) 106 Mass. 194, 197.

It was held in this case that by maintaining a building with a roof constructed so that snow and ice collecting on it from natural causes will naturally and probably fall into the adjoining highway, the owner of the building is liable without other proof of negligence to a person injured by such a fall upon him while travelling on the highway with due care.

In Bellows v. Sackett (1853), 15 Barb. (N.Y.) 96, the eaves of the defendant's building came within about two feet of a dwelling house erected by the plaintiff upon his adjacent lot, and, owing to a want of suitable repairs to the gutter of the defendant's building, the water from his roof fell between the two buildings—it was assumed, for the purpose of the decision, on his own land—and by percolation found its way into the plaintiff's cellar through the wall, to the injury of the wall and the lower timbers of his house.

The plaintiff recovered, apparently on the ground that, "owing to a want of suitable repairs, the water falling upon an area of twenty-five feet by thirteen is collected at a single point and precipitated in an unnatural and unusual quantity and manner so near to the plaintiff's premises as necessarily to cause him an injury:" p. 102.

In a later New York case, Walsh v. Mead (1876), 15 N.Y. 387 (8 Hun), it was held that where the roof of a building in a large city is so constructed as to render the snow falling upon it liable to be precipitated upon the sidewalk, and there is no adequate guard at the edge to retain it, it is, in judgment of law, a nuisance, for it imperils the safety of persons passing below it in the lawful use of the street upon which it fronts.

In Garland v. Towne (1874), 55 N.H. 55, it was said by Ladd, J. (pp. 58, 9):—

"If a man must, at all hazards, keep upon his own premises the snow which is arrested in its natural fall to the earth by the roof of his house, it seems to me some very inconvenient, not to say absurd, consequences may follow. We all know that in this climate a heavy fall of snow is not unfrequently followed immediately by wind; and, when that happens, it is a probable, if not an inevitable, consequence that the snow, which has been arrested in its natural fall, and accumulated on roofs, will be carried off and deposited by the wind in a different place from where it would have finally rested but for the roof; hence, in very many instances, the act of the landowner in maintaining his building, concurring with the natural operation of the elements, will cast upon the premises of an adjoining proprietor snow with which, otherwise, such adjoining proprietor would not have been annoyed, incumbered, or damaged. I do not see why such a doctrine, if carried to its logical results and strictly applied, would not practically prevent the building of cities. I think the injury which results in such a way, from a customary and reasonable use by the landowner of his property, he using due care (which would, doubtless, be a very high degree of care) to guard against damage to his neighbour, does not furnish a legal cause of action, but must be regarded as *damnum absque injuria.*"

Cushing, C.J., expressed the opinion (p. 60) that the defendant was not liable unless there had been a want of due care, and Foster, C.J.C.C., agreed that, in the absence of negligence, the defendant was not liable.

Ladd, J., thought that "it was the general duty of the defendant to prevent the sliding of snow and ice from her roof upon the sidewalk; she was bound to guard against such a result by the exercise of due care": p. 56; and he also said that he supposed "the fact that ice slid from the roof upon the sidewalk, on this particular occasion, is evidence to be considered on the general question of the defendant's negligence," and he added, "I see no reason why the jury might not legally find negligence from that circumstance alone, if unexplained": Ib.

In Underwood v. Waldron (1876), 33 Mich. 232, the question was as to the liability of the defendant for injury caused to the plaintiff's building by water flowing from the defendant's roof against it.

The judgment of the Court was delivered by Cooley, C.J., who, referring to Rylands v. Fletcher (1866), L.R. 1 Ex. 265, (1868) 3 H.L. 330, said there was in it some strong language "as to the duty of one man to protect another against water flowing from his reservoir," but the case had no analogy to the case he was considering in its effects and that the governing principle should perhaps be different, and he went on to say that the injury "in that case was from the bursting of a reservoir, into which defendant had gathered water on his grounds, and it was thought that, under the peculiar circumstances, which need not here be mentioned, the party should at his peril have kept the water from inflicting injury to his neighbours. That was an exceptional case, but this was the ordinary case. Here are adjoining proprietors in a town mutually improving their property with buildings. This is their right, and the policy of the law favours it. Neither of them is under obligation to permit his lot to remain vacant because putting up a building will possibly throw water upon his neighbour. The respective duties of the parties to each other are those which the requirements of good neighbourhood in such a town would impose. Each must so use his own as not to injure his neighbour. But this means only that he shall use all due care and prudence to protect his neighbour; not that he shall, at all events and under all circumstances, protect him. Any injury that may result, notwithstanding the observance of proper caution, must be deemed incident to the ownership of town property and can give no right of action. Undoubtedly the defendants were bound to put proper eave troughs or gutters upon their building and to keep them in proper order, if the neglect to do so would be likely to injure the plaintiff, but, if they did this and were guilty of no negligence in that regard, the plaintiff can have no legal complaint against them. Injuries from extraordinary or accidental circumstances, for which no one is in fault, must be left to be borne by those on whom they fall": pp. 238, 9.

Underwood v. Waldron was followed in Barry v. Severen Peterson (1882), 48 Mich. 263, and it was there held that damages cannot be recovered on account of water dripping from a house on adjacent premises without proof that it was caused by some neglect of duty on the part of the house owner.

The English case of Hurdman v. The North-Eastern Railway Company, L.R. (1876) 3 C.P.D. 168, may also be referred to. That was the case of the surface of the defendant's land having been artificially raised by earth placed on it, in consequence of which rain water which fell on the defendant's land made its way through the defendant's wall into the adjoining house of the plaintiff and caused substantial damage, and it was held that the defendant was liable.

Delivering the judgment of the Court, Cotton, L.J., said (p. 173):—

"The heap or mound on the defendant's land must, in our opinion, be considered as an artificial work. Every occupier of land is entitled to the reasonable enjoyment thereof. This is a natural right of property, and it is well established that an occupier of land may protect himself by action against any one who allows any filth or any other noxious thing produced by him on his own land to interfere with this enjoyment. We are further of opinion that . . . if any one by artificial erection on his own land causes water, even though arising from natural rain fall only, to pass into his neighbour's land, and thus substantially to interfere with his enjoyment, he will be liable to an action at the suit of him who is so injured."

The question in this case arose upon demurrer to the statement of claim, and the nature of the artificial work does not appear, but it is probable that it was a railway embankment.

If a dwelling house is an artificial work within the meaning of this case, it would seem to follow that, where snow or ice accumulates on the roof of a building and fall from it on to a neighbour's property, causing damage, the owner or occupant of the building is liable for the damage so done.

The climatic conditions of Ontario are such as to make such an obligation very onerous, and it seems reasonable that, in this country, the obligation should be limited to providing reasonably sufficient means to guard against ice or snow falling from the roof.

The Ontario cases leave the law in a state of some uncertainty. Lazarus v. Toronto (1859), 19 U.C.R. 1, was the case of an action to recover damages sustained by a pedestrian owing to the fall of snow from a house which abutted on the highway on which he was walking, and it was held that, in the absence of evidence of fault or negligent construction of the house or roof or of a municipal by-law requiring the owners of buildings to remove the snow from the roofs, there was no liability either against the owner or the tenant of the building.

In stating his opinion, Robinson, C.J., said (p. 13):—

"The Municipal Act, 22 Vict. c. 99, s. 290 (12), provides that the municipal council of every city may pass by-laws for compelling persons to remove the snow from the roofs of the premises owned or occupied by them. It was not shewn that any by-law had been made by the corporation of Toronto and that the defendants had infringed it, and I do not see in the evidence such proof of negligence as should render the owner or occupier of the house from which the snow fell liable to an action. What occurred here was such an accident as may occasionally happen and be attended with serious results, but I do not think that, in the absence of any public regulation on the subject, people are compelled to keep the roofs of their houses clear of snow or to detain the snow on the roofs, so that the snow cannot slide from them into the street. There may be in a particular case something so evidently faulty in the construction of a roof as to make it more likely to occasion accident from this cause than roofs in general are, but I do not see any proof that such was the case here."

Burns, J., said (p. 17): "I know of no obligation imposed at common law where people use their property in a manner similar to all others to do any act to guard other persons against the acts of nature. This count assumes, from the fact of snow having fallen from the roof and the plaintiff having sustained a severe and serious injury, that it was the duty of the defendants to have removed the snow from the roof of the house."

Skelton v. Thompson (1883), 3 O.R. 11, was the case of an injury sustained by a pedestrian owing to her having slipped upon ice which had formed from the freezing of water that had been brought down from the roof of the defendant's house by means of a down pipe, and it was held that, in the absence of evidence that the defendants knew or ought reasonably to have known that the ice had formed there, the defendants were not liable.

Hagarty, C.J. (p. 14), referring to the head note in Shipley v. Fifty Associates (1869), 101 Mass. 251, which is as follows:—

> "For an injury resulting from the sliding of a mass of ice and snow from a roof upon a person travelling with due care in a highway, the owner of the building is liable, if the roof was subject to his use and control, and he suffered the ice and snow to remain there for an unusual and unreasonable time after he had notice of its accumulation and might have removed it."

Said: "This seems reasonable enough. When the owner knows that ice or snow is accumulated on a sloping roof, liable, of course, at any change of atmosphere or otherwise to fall into the public street, he may properly be held responsible if in reasonable time he do not take steps to prevent injury to passers-by."

Armour, J., dissented, being of opinion that

"The pipe and spout were wrongfully upon the street, and were kept there wrongfully by the defendants, and the conducting of the water from the roof of their building on to the street was a wrongful act on their part, and ice formed thereby, being the natural, certain and to them well-known result of their wrongful acts, they were just as much responsible for the obstruction so formed as they would have been if they had carted ice from the bay and placed it there."

In Landreville v. Gouin (1884), 6 O.R. 455, Lazarus v. Toronto was commented on and distinguished.

The action was for injuries sustained by a pedestrian being struck by snow and ice which fell from the roof of a building owned by the defendant, which sloped towards the street, and was covered with tin, and there was evidence that the defendant had been notified half an hour before the accident that there was danger of the ice and snow falling from the roof.

Cameron, C.J., was of opinion that the Lazarus case did not preclude the Court from leaving the question of negligence to the jury, and pointed out that there was in the notice that had been given to the defendant an element of negligence that there was not in that case.

Skelton v. Thompson was also distinguished, upon the ground that "the principle on which" it "was decided was that the act complained of was not the *causa causans*, and that, without neglect or unreasonable delay in removing ice formed upon the sidewalk by reason of water flowing in a harmless way on to the sidewalk from the waterspout of a house and then freezing, the owner was not liable for an injury to a person slipping upon the ice so formed, whereby he sustained injury": p. 461.

The Chief Justice also said (pp. 461-2):—

> "I presume, if the defendant had had a cartload of snow and ice placed upon his roof, and it had fallen, he could not avoid responsibility to any one using the highway injured thereby, if it were found a negligent act to so place it. I do not then, on principle, see how he can avoid such

> responsibility when he constructed his roof, or used the building with a roof so constructed by others, so as to cause the snow to slide and pack and overhang the highway, or to be precipitated thereon, when he has had reasonable notice of the dangerous condition of his roof from the snow and ice accumulated there."

Rose, J., concurred in granting a new trial, though he could not see if, as he thought, had been decided in the Lazarus case, "there is no common law duty cast upon the defendant to 'keep the roof of his house clear of snow, or to detain the snow on the roof, so that the snow on the roof cannot slide from it into the street,' and no statutory obligation of which the plaintiff desires to avail himself, the mere giving of notice to do that which, as against the plaintiff, it was not his duty to do, can give a cause of action to the plaintiff."

In Roberts v. Mitchell (1894), 21 A.R. 433, 439, Maclennan, J., referring to cases which illustrate the duty of a landowner in respect of his neighbour's land, mentioned as one of them that "he may not shed the water from his roof upon his neighbour's land."

It is submitted that the law will be found to be that the owner or occupant of a building, the roof of which is so constructed that from natural causes the snow and ice which falls or collects upon it will naturally and probably slide from the roof, is bound, apart from any obligation imposed upon him by a municipal by-law, to take all reasonable means to prevent the snow or ice from falling upon the adjoining property or an adjoining highway and causing damage to person or property there, and that that is the extent of the duty which the law imposes upon him, and it has been so held by a Divisional Court in Meredith v. Peer (1917) 12 O.W.N. 97

There is also considerable difference of judicial opinion as to whether failure to remove the snow from the roof of a building, in contravention of a municipal by-law, will render the owner or occupant of the building liable for the consequences of its falling and causing injury where he would not be liable at common law.

In Lazarus v. Toronto (supra), Robinson, C.J., seems to have thought that it would, but Hagarty, C.J., in Skelton v. Thompson (supra), doubted whether "injury to a passer-by from non-compliance with the by-law" could "be recoverable from the owner or occupant neglecting to obey the by-law": (p. 15).

Cushing, C.J., in Garland v. Towne (supra), appears to have been of the same opinion as Robinson, C.J.

The question as to when a person who has sustained injury owing to a breach of a statutory duty imposed upon another has a right of action against that other and when he has not has been the subject of consideration and decision in cases subsequent to those that have been mentioned, and it is suggested that, according to the principles established by Groves v. Wimborne (1898), 2 Q.B. 402, 14 T.L.R. 493, the breach of such a by-law resulting in injury to a traveller upon the highway would give him a right of action against the person whose failure to obey the by-law has caused the injury, although at common law he might not be answerable for it. Looking at the purview of the Act (*i.e.*, the Act conferring upon municipal councils power to pass such by-laws), the duty the imposition of which it authorizes is a duty in the interests of a particular class of persons, viz., travellers upon highways, and there is nothing to lead to the conclusion that the imposition of fines for the neglect of the duty which the councils have statutory power to impose should be the only remedy for breach of that duty.

A by-law passed by statutory authority has the force of a legislative enactment—Hopkins v. Swansea (1839), 4 M. & W. 621, 640—in which Lord Abinger said: "The by-law has the same effect within its limits and with respect to the persons upon whom it lawfully operates as an Act of Parliament has upon the subjects at large, and the dictum of Lord Holt, which has been cited and which seems reasonable, that it would be absurd to say an Act of Parliament should pass to give a man a benefit and that he should not have an action, for it is equally applicable to the case of a by-law confining it to the persons on whom it is intended to operate."

62. For clearing away and removing snow and ice from the roofs of unoccupied buildings adjoining a highway and from the sidewalks adjoining the premises and adjoining vacant land in the municipality or in any defined area of it at the expense of the owner, and for collecting or recovering the expenses incurred in so doing in the manner provided by section 500.

Case of unoccupied buildings and vacant land.

Sparring Exhibitions, etc.

63. For prohibiting sparring exhibitions and boxing matches, where an admission fee is charged, without the written permission of the chief constable in a city or town, or of the reeve in townships and villages.

Sparring exhibitions and boxing matches.

Steam Transmission.

64. For authorizing any person supplying steam for heat or power to lay down pipes or conduits for transmitting steam under the highways or public squares, on such terms and conditions as the council may deem expedient.

Transmitting steam under highways.

(*a*) A by-law shall not be passed under the authority of this paragraph in violation of any agreement of the corporation.

Vagrants, etc.

Vagrants.

65. For restraining and punishing vagrants, mendicants, and persons found drunk and disorderly in any highway or public place.

Rex v. Keenan (1913), 28 O.L.R. 441, 13 D.L.R. 125, 21 Can. Cr. Cas. 467, was the case of a person who had been convicted of having been drunk in a public place, contrary to a municipal by-law. No question was raised as to the by-law being *ultra vires*, because it dealt with a matter which was the subject of legislation in the criminal law by the Parliament of Canada, and it seems to have been assumed that the by-law was valid.

Vice—Preventing.

Vice, drunkenness, etc.

66. For preventing vice, drunkenness, profane swearing, indecent, obscene, blasphemous or grossly insulting language, and other immorality and indecency, and the indecent public exposure of the person.

Watercourses and Drains—Obstruction of.

Obstruction of drains.

67. For prohibiting the obstruction of any drain or watercourse, and for permitting and regulating the size and mode of construction of culverts and bridges which cross any drain or watercourse situate on a public highway.

Water Closets, Privy Vaults, etc.—Filling up.

Closing and filling up cesspools, etc.

68. For requiring owners, lessees and occupants of land in the municipality or any defined area of it to close or fill up water closets, privies, privy vaults, wells or cesspools, the continuance of which may, in the opinion of the council or the medical health officer, be dangerous to health.

Weeds.

Prevention of growth of thistles and weeds. Appointment of inspector to enforce by-law.

69. For prohibiting the growth of Canada thistles and other weeds detrimental to husbandry and for compelling the destruction thereof; for appointing an inspector to enforce the by-law, and for prescribing his duties and fixing his remuneration.

In Flitton v. Stange (1913), 12 D.L.R. 266, 24 W.L.R. 275, 4 W.W.R. 686 (Alta.), it was held that a contravention of The Noxious Weeds Act renders the person guilty of it liable to an action for damages sustained by a landowner by reason of the seeds spreading to his land.

There is no such liability at common law: Giles v. Walker, L.R. (1890), 24 Q.B.D. 656.

See also Osborne v. Kingston (1893), 23 O.R. 382, in which it was held that the corporation was not liable for injuries caused by the spread of noxious weeds because it had not appointed an inspector under The Noxious Weeds Act, now R.S.O. c. 253, and was not, as to the highways, the owner or occupant of land within the meaning of that Act, and, therefore, was under no obligation to cut the weeds growing on them.

Wells and Water.

Cleaning and prohibiting fouling of wells, etc.

70. For establishing, protecting, regulating and cleaning public and private wells, reservoirs and other public and private conveniences for the supply of water; for prohibiting the fouling of them, or the wasting of the water, and for procuring an analysis of such water, and providing for the payment of the expense thereof, and for making reasonable charges for the use of public water.

Filling up wells.

71. For the closing or filling up of public or private wells.

Compelling use of water supply.

72. For compelling the use within the municipality or any defined area therein, for drinking and domestic purposes, of water supplied from the waterworks of the municipality or of a waterworks company; and for prohibiting the use within the municipality or such area of spring or well water for such purposes. 3-4 Geo. V. c. 43, s. 399, pars. 56-72.

Mackenzie v. Toronto (1904), 4 O.W.R. 457; Hamilton Distillery Company v. Hamilton (1905), 10 O.L.R. 280, (1906) 12 O.L.R. 75, 38 S.C.R. 239, noted under s. 249 (1) (by-laws which discriminate).

The effect of section 464 of The Consolidated City Charter (1907), (Halifax), is to authorize the corporation to place meters on the service-pipe of a water-taker within his premises: Dennis v. Halifax (1910), 45 N.S. 74, 9 E.L.R. 189, 360.

Where a municipal corporation, having statutory authority to provide for the municipality a good and sufficient supply of water for domestic, fire and other purposes, and to do all things necessary therefor, established a water system and supplied water to the inhabitants of the municipality for all purposes, the corporation is not bound to supply water for industrial purposes at any and all times, but has a right to cut off the supply whenever, in the *bona-fide* exercise of its discretion, the council deems it best in the interests of the municipality: Crockett v. Campbellton (1910), 39 N.B. 573, 8 E.L.R. 504.

See also Scottish Ontario v. Toronto (1899), 26 A.R. 345, noted under s. 8 (liability for other wrongs).

400. BY-LAWS MAY BE PASSED BY THE COUNCILS OF URBAN MUNICIPALITIES.

Bathing and Boat-Houses—Inspection of.

Inspection of bathing and boat houses.

1. For inspecting public bathing-houses and boat-houses or premises wholly or partly used for boat-house purposes; and for prohibiting their use for illegal or immoral purposes.

Begging.

Prevention of begging, etc.

2. For prohibiting common begging or persons from importuning, in the highways or public places, others for help or for aid in money, and deformed, malformed, or diseased persons from exposing themselves, or being exposed there, to excite sympathy or for the purpose of obtaining help or assistance. 3-4 Geo. V. c. 43, s. 400, pars. 1, 2.

Borrowing Money for Certain Purposes Without Assent of Electors.

Borrowing money for extension of water, gas, electric light works, etc

3. Where the corporation of an urban municipality has heretofore constructed, purchased or acquired, or hereafter constructs, purchases or acquires gas, electric light, power or waterworks or works for the development of a water power for generating, or works for producing, transmitting or distributing electrical power or energy or sewerage works or works for the interception, purification or disposal of sewage, at the expense of the corporation at large, for borrowing such further sums as may be necessary to extend or improve such works (or to meet the cost of extensions or improvements already made to such works).

(*a*) The by-law shall not require the assent of the electors if it passed by a vote of three-fourths of all the members of the council and is approved by the Municipal Board.

When assent of electors not required.

(*b*) Such approval may be given if it is shown to the satisfaction of the board that the extension is necessary, and that a sufficient additional revenue will be derived therefrom to meet the annual payments in respect of such debt and the interest thereon, or in the case of the extension or improvement of sewerage works or works for the interception, purification or disposal of sewage, that such extension or improvement is approved of by the Provincial Board of Health.

Approval of Board, conditions precedent to.

(*c*) This paragraph shall not apply to works required by the Provincial Board of Health to be established, improved, extended, enlarged, altered or renewed or replaced. 3-4 Geo. V. c. 43, s. 400, par. 3; 4 Geo. V. c. 33, s. 11.

The words in brackets were added by 4 Geo. V. c. 33, s. 11.

Paragraph 3 must be read in connection with the provisions of section 9 of *The Power Commission Act*, 1917, which are as follows:—

24*a*.—(1) A municipal corporation which has entered into a contract with the commission for the supply of electrical power or energy shall not pass any by-law for the issue of debentures for any extension or improvement to an electrical light, heat or power system without having first obtained the assent of the commission to the amount of such issue and the purposes to which the same is to be applied.

(2) Every member of the council of the municipal corporation passing a by-law in contravention of subsection 1 shall be personally responsible for any loss or expense occasioned to the corporation by such action unless he shows that he voted against the passing of such by-law or did everything in his power to prevent the passing of the same.

(3) Every by-law passed in contravention of subsection 1 shall be illegal and void and the commission may take the same proceedings for quashing such by-law or restraining the corporation from issuing debentures thereunder as might be taken by a ratepayer of the municipality.

(4) This section shall have effect, notwithstanding the provisions of any other general or special Act heretofore enacted relating to any municipal corporation.

Buildings—Strength of Walls, Beams, etc.

Size and strength of walls, etc., and production of plans.

4. For regulating the size and strength of brick, stone, cement and concrete walls, and of the beams, joists, rafters, roofs and their supports of all buildings to be erected, altered or repaired, and for requiring the production of the plans of all buildings, and for charging fees for the inspection and approval of such plans, and fixing the amount of the fees. 3-4 Geo. V. c. 43, s. 400, par. 4.

It was held in In re Ryan and McCallum (1912), 4 O.W.N. 193, 7 D.L.R. 420, 23 O.W.R. 193, that there is nothing in The Municipal Act which authorizes the passing of a by-law requiring the obtaining of a building permit, and a provision of a by-law which requires that the erection of a building must not be commenced until the owner obtains a permit from the city architect is *ultra vires*, but it has been since held that this paragraph authorizes a by-law to require plans to be produced and approved, which is what is meant by the granting of a building permit. The paragraph applies also to alterations in the plans, which must be produced and approved: Toronto v. Ryan (1914), 7 O.W.N. 89.

It was held in Loo Gee Wing v. Amor (1909), 10 W.L.R. 383 (B.C.), that a municipal council had no authority to regulate the alteration of buildings or to require that a permit should be obtained before proceeding with the alteration; noted also under s. 250.

It was held in Rex v. Nunn, In re Rogers and Nunn (1905), 15 Man. L.R. 288, 1 W.L.R. 559, that provisions somewhat similar to s. 400, pars. 4, 16, 17, 18, 19, did not authorize a by-law being passed requiring the submission of plans and specifications of proposed repairs to a building inspector and the obtaining of his certificate before commencing repairs to any building, and that repairs to a building do not constitute a re-erection of it, and it was *ultra vires* of the council to enact that, if the repairs should cost forty per cent. of the actual value of the building, repairing it should be considered a re-erection of it.

It was also held that the amendment by the council of other provisions of the same by-law, under powers conferred by legislative amendments of the section in question made after the passing of the by-law, had not the effect of re-enacting the provisions, which were held to be invalid.

A corporation is entitled to impose a reasonable fee for this service: Montreal v. Walker (1885), Montreal L.R. 1 Q.B. 469, followed in Frankel v. Winnipeg (1912), 23 Man. L.R. 296, 8 D.L.R. 219, 22 W.L.R. 597, 3 W.W.R. 405.

The legislation in question, in the latter case, must have made no provision for charging a fee such as par. 4 contains.

Buildings—Removing or Wrecking

4*a*. For regulating the removing or wrecking of buildings, and the spraying thereof during such work so as to prevent dust or rubbish arising therefrom. 5 Geo. V. c. 34, s. **Regulating removal and wrecking of buildings.**

Cab Stands and Booths.

5. For authorizing and assigning stands on the highways and in public places for vehicles kept for hire; and for authorizing the erection and maintenance of covered stands or booths on the highways and in public places, for the protection or shelter of the drivers of such vehicles. **Cab stands.**

(*a*) No such covered stand or booth shall be placed upon the sidewalk without the consent of the owner and occupant of the adjoining land.

See Canadian Pacific Railway Company v. Toronto (1902), 1 O.W.R. 255, noted under s. 249 (1) (by-laws passed in breach of agreement, etc.).

The council of Montreal has not power to prevent a licensed cabdriver stationing himself on the private property of an innkeeper with the consent of the latter: Desmarais v. Samson (1902), 5 Que. P.R. 167.

The council of Montreal has no power to delegate to a committee the authority vested in it by the charter of the city to prescribe standing places or stations for cabs: Samson v. Montreal (1903), Q.R. 23 S.C. 500.

A licensed cabman has as such no special or individual interest sufficient to justify an action for the annulment of a resolution of a committee of a municipal council establishing cab stands: Ib.

Police Commissioners may, by resolution, establish a cab stand in the vicinity of an hotel for the convenience of its guests, and may prohibit the use of it by cabmen other than those designated by the keeper of the hotel.

Such a resolution does not amount to a usurpation of the legislative powers conferred on the municipal council, but is merely an act of police administration.

Samson v. Montreal (1905), Q.R. 14 K.B. 461.

A livery stable keeper, who, under an agreement with the proprietor of an hotel, keeps carriages in attendance at the hotel for the immediate use of its guests, but to be deemed as hired by the proprietor from the time of attendance until dismissed or engaged by a guest, at the rate of one cent an hour, and these fares, chargeable to the guests, the proprietor is to be responsible for, does not violate a by-law which provides that "no cab, cart, express waggon or other vehicle kept for hire shall stand upon or in any street while waiting for hire or engagement or while unengaged except . . ." Rex v. Maher (1905), 10 O.L.R. 102.

Cellars—Plans of.

Ascertaining levels of cellars, etc.

6. For requiring owners and occupants to furnish the council with the levels, with reference to a line fixed by by-law, of their cellars heretofore or hereafter dug or constructed, and for taking such other means as may be deemed necessary for ascertaining such levels.

Compelling the furnishing of ground or block plan of buildings to be erected.

7. For requiring to be deposited with an officer named in the by-law, before the erection of a building is commenced, a ground or block plan of the building, with the levels of the cellars and basements, with reference to a line fixed by by-law.

Children Riding Behind Vehicles.

Prohibiting children from riding behind waggons, etc.

8. For prohibiting children from riding on the platforms of cars, or riding behind or getting on waggons, sleighs or other vehicles while in motion, and for preventing accidents arising from such causes.

Coasting and Tobogganing.

Coasting and tobogganing.

9. For prohibiting or regulating coasting or tobogganing on the highways. 3-4 Geo. V. c. 43, s. 400, pars. 5-9.

It is held in Quebec that the corporation of a municipality in which "coasting on bobsleighs" is carried on in the streets as a common practice, that does nothing to put a stop to it, is guilty of negligence and liable in damages for accidents to passers-by: Dudevoir v. Waterville (1909), Q.R. 37 S.C. 289, (1910) Q.R. 20 K.B. 306.

Cross, J., delivering judgment in the King's Bench, said that "there is scarcely any rule more generally accepted than that a municipal corporation is not responsible in damages either for failure to enact ordinaces or, unless in exceptional instances of gross abuse, for failure to enforce them": p. 309. He based his judgment on the ground that the streets being vested in the corporation, and it being, therefore, the owner of a place of public resort, the corporation was guilty of negligence in having tolerated in it a cause of damage from which the plaintiff suffered.

Dogs—Licensing of.

Licensing and registration of dogs.

9*a*. For licensing and requiring the registration of dogs and for imposing a license fee on the owners, possessors or harbourers of them, with the right to impose a larger fee in the case of bitches or for each additional dog or bitch where more than one is owned, possessed or harboured by any one person or in any one household.

(*a*) Where the license fee is equal to or exceeds the amount of the tax imposed by *The Dog Tax and Sheep Protection Act*, sections 3 to 8 of that Act shall not apply while the by-law remains in force, and it shall not be necessary to enter any particulars as dog taxes on the collector's roll. 5 Geo. V. c. 34, s. 25.

A by-law requiring that every owner of a dog shall take out a license for him and obtain a tag, which shall be securely fixed to the collar of the dog; that no person shall allow a dog to run at large in a public place unless led on a chain; that any dog found running at large shall be liable to be captured, killed or otherwise disposed of, is not *ultra vires*, and may properly be passed under the good government section of The Municipal Act: Zeats v. Johnston (1910), 3 S.L.R. 364.

Drainage Purposes—Acquiring Land in Another Municipality for.

Acquiring land in another municipality for

10. For acquiring, with the consent of the council thereof, land in any other municipality required for preventing such urban

drainage purposes.

municipality or any part of it from being flooded by surface or other water flowing from such other municipality or for an outlet for such water; and for constructing, maintaining and improving drains, sewers and watercourses in the land so acquired.

Drill Sheds and Armouries.

Site for drill shed or armoury.

11. For acquiring land in the municipality for a drill shed or armoury for any militia or volunteer corps having its headquarters in the municipality.

Elevators, Hoists, etc.

Erection of hoists and elevators. Rev. Stat. c. 229.

12. Subject to *The Ontario Factories Act* and any other Act relating to cranes, elevators and hoists, for regulating the construction of and for inspecting cranes, hoists and elevators, and for regulating the manner in which elevators and hoists which are to be operated automatically or otherwise in buildings, shall be constructed and operated, and for licensing elevators and hoists used by the public or by employees.

Fire Engines, etc.—Right of Way on Highways.

Right of way on streets for fire reels.

13. For providing that the reels, engines and vehicles of the Fire Department shall have the right of way on the streets and highways while proceeding to a fire or answering a fire alarm call.

Firemen, etc.

Establishing fire companies, etc.

14. For appointing fire wardens, fire engineers and firemen and for promoting, establishing, and regulating fire, hook-and-ladder, and property saving companies.

See Enright v. Montreal, referred to in notes to par. 15.

Firemen, etc.—Medals, Rewards and Gratuities to.

Rewards to firemen and persons distinguishing themselves at fires.

15. For providing medals or rewards for persons who distinguish themselves at fires; and for granting gratuities to the members of the fire brigade who have become incapacitated for service on account of injuries or ill-health caused by accident or

exposure at fires, or from old age or inability to perform their duties, and for granting pecuniary aid or other assistance to the widows and children of persons killed by accident while in the discharge of their duties at fires, or who die from injuries received or from illness contracted while in the service of the corporation as firemen.

A resolution of a municipal council for the payment of an indemnity of a thousand dollars to the heirs of firemen killed in the performance of their duties is valid either under a general power to make by-laws for the "peace, order, good government and general welfare" of the municipality or an authority to pass by-laws to hire firemen as being a condition to the hiring: Enright v. Montreal (1909), Q.R. 37 S.C. 448.

Fires—Prevention of.

A property owner cannot maintain an action to enforce by injunction a municipal fire limit by-law: Tompkins v. Brockville (1899), 31 O.R. 124, McBean v. Wyllie (1902), 14 Man. L.R. 135.

The principle of these decisions was applied in the case of an application for an injunction to restrain the granting of a permit for the erection of a building, the erection of which, it was alleged, would contravene the provisions of a residential street by-law: Mackenzie v. Toronto (1915), 7 O.W.N. 820.

Erection of buildings, etc.

16. For regulating the construction, alteration or repairs of buildings.

Wooden buildings.

17. For prohibiting the erection of wooden buildings or wooden additions, and of wooden fences, or the removal of any such building or fence from one place to another in defined areas of the municipality.

"Erection."—In Reg. v. Howard (1884), 4 O.R. 377, it was held that re-shingling an old house, as it had been shingled, was not an "erection" within R.S.O. (1877) c. 174, s. 467 (6); and in Reg. v. Copp (1889), 17 O.R. 738, it was held that R.S.O. (1887) c. 184, s. 496 (10), did not authorize the regulation of the mode of construction of the interior walls of an existing building that was being subdivided.

These cases are not now applicable, owing to amendments that have been made since they were decided, and particularly to the amendment made by 1 Geo. V. c. 57, s. 9, to what is now paragraph 16, by the addition of the words, "or alterations or repairs to," to what was then 3 Edw. VII. c. 19, s. 542 (1), cl. (*a*), which read "for regulating the erection of buildings."

The Municipal Act (1881), c. 16, s. 104 (58, 78) (B.C.), does not authorize the passing of a by-law to regulate mere alterations in existing buildings: Reg. v. On Hing (1884), 1 B.C.R. Pt. II. 148.

Under the charter of the city of St. Henri, the council may by by-law prohibit the construction of buildings of less than two stories which are not cottages: St. Pierre v. St. Henri (1902), 5 Que.P.R. 362.

Kind of walls.

18. For prohibiting the erection or placing within defined areas of buildings or additions to them with main walls other than of brick, cement, concrete, iron or stone, and roofing of other than incombustible material.

This paragraph does not authorize the passing of a by-law requiring "all buildings damaged by fire, if built or partially rebuilt," to be made fireproof at the peril of the building being removed at the expense of the owner: Quinn v. Orillia (1897), 28 O.R. 435.

It is probable that this case is still law, notwithstanding the wide language of par. 16, the generality of which may not cover the cases specifically dealt with in this paragraph.

Where an enabling statute empowers a municipal council to impose building restrictions within certain fixed limitations, but the statute is not intended of itself to prohibit anything, the council may, by its by-law, stop short of the limit in the exercise of its discretion, and impose only a part of the authorized restrictions: In re Coleman and McCallum (1913), 4 O.W.N. 1127, 11 D.L.R. 138.

A by-law which prohibits the erection within a defined area of any building "the outside and party walls" of which are not constructed of "brick, stone, concrete or other approved of incombustible material" goes beyond this section, which authorizes the passing of by-laws prohibiting the erection of any building the "main walls" of which are not of "brick, iron or stone": Toronto v. Rogers (1914), 31 O.L.R. 167, 19 D.L.R. 75.

It was said by Mulock, C.J. (p. 172), that the effect of the by-law was to prohibit "the erection of a building whose main walls are to be of iron," and that this defect was not cured by the words "or other approved of incombustible material," because they permitted the withholding approval where iron was to be used. Magee, J.A., was of the same opinion, and thought that the by-law was open to objection because (1) it did not prohibit all wooden buildings, but expressly permitted "wooden sheds," and what is called a wooden stable, if the latter be covered with roughcast or iron sheeting; (2) the statute allows prohibition of buildings other than with main walls of brick, iron or stone and roofing of incombustible material. The by-law permits roofs of shingles if laid on asbestos paper; (3) the statute refers to main walls; the by-law only speaks of outside and party walls; (4) the by-law permits walls of "concrete," which is not mentioned in the statute, and also permits "other approved-of incombustible material."

The view of Magee, J.A., was that, if the powers conferred by the statute were exercised, the prohibition must extend to everything mentioned in the enactment under which the by-law is passed: for instance, that in a by-law passed under clause (*c*) the prohibition must extend to buildings other than with main walls of brick, iron or stone and roofing of incombustible material; and that, if it does not, it is open to objection, or, as he expressed it, "the power to prohibit given by this statute did not, however, in my opinion, give power to discriminate so as to prohibit some things while permitting others over which the power extended": p. 176. The correctness of that view is open to serious question, and it would seem that a more reasonable view of the meaning of the enactment is that it fixes the limit of the power to prohibit, but does not prevent the council from making its by-law less onerous than it would be if the power were exercised to the full extent of the authority conferred, and it is difficult to see why these numbered objections should prevail.

None of the other Judges expressed any opinion as to this aspect of the case.

See upon this point In re Coleman and McCallum (supra).

Repairs to existing buildings.

19. For regulating the repairing or alteration of roofs or the external walls of existing buildings within such areas, so that the buildings may be as nearly as practicable fireproof.

Pulling down, etc., buildings illegally erected.

20. For authorizing the pulling down or removal, at the expense of the owner, of any building or erection constructed, altered, repaired or placed in contravention of the by-law.

Pulling down buildings in ruinous state.

21. For authorizing the pulling down or repairing or renewing, at the expense of the owner, of any building, fence, scaffolding or erection, which, by reason of its ruinous or dilapidated state, faulty construction or otherwise is in an unsafe condition as regards danger from fire or risk of accident.

See Horne v. Vancouver (1911), 19 W.L.R. 654 (B.C.), noted under s. 399, par. 46.

Fire in stables, etc.

22. For prohibiting or regulating the use of fire or lights in factories, stables, cabinet makers' shops, carpenters' shops, paint shops, dye and cleaning works, and places where their use may cause or promote fire.

Dangerous manufactures.

23. For prohibiting or regulating the carrying on of manufactures or trades which may be deemed dangerous in causing or spreading fire.

In Reg. v. Webster (1888), 16 O.R. 187, a by-law prohibiting the carrying on of manufactories of a certain class within 300 feet of any other building unless with the consent in writing of the owners of the buildings within the 300 feet, "such consent, however, to be submitted for approval by the Chairman of the Board of Works," was held to be invalid. The view of the Court was that "the by-law was unjustifiable on the ground that it delegates in part the exercise of the judgment and discretion that should be exercised by the enacting body alone, and does not place all the inhabitants in the same position in regard to the matters affected by the enactment": p. 192. In the same case a provision of another by-law which excepted from the prohibition it contained cases in which the leave of the council was obtained was also held to be bad.

Inspecting and regulating electric wires, etc.

24. For regulating and inspecting wires and other apparatus placed or used for the transmission of electricity for any purpose in or along any highway or on or in any building, and for requiring any such wire or other apparatus which is deemed unsafe or dangerous to be removed or repaired at the expense of the person to whom it belongs or who is using it.

Construction of chimneys, fireplaces, etc.

25. For regulating the construction of chimneys, flues, fireplaces, stoves, ovens, boilers or other apparatus or things which may be dangerous in causing or promoting fire, and for removing at the expense of the owner any of them constructed in contravention of the by-law.

Dimensions and cleaning of chimneys.

26. For regulating the construction as to dimensions and otherwise, and for enforcing the proper cleaning of chimneys.

This provision does not authorize a by-law requiring that all chimneys shall be swept only by chimney inspectors appointed by the council: Reg. v. Johnston (1876), 38 U.C.R. 549.

Removal of ashes.

27. For regulating the mode of removal and safe keeping of ashes.

Erection of party walls.

28. For regulating and enforcing the erection of party walls.

29. For requiring the owners and occupants of buildings to have scuttles in the roof, with approaches, or stairs or ladders leading to the roof.

Scuttles, ladders, etc., to houses.

30. For requiring buildings and yards to be put in a safe condition to guard against fire or other dangerous risk or accident.

Guarding buildings against fire.

31. For requiring each inhabitant to provide as many fire buckets, in such manner and at such time as may be prescribed; and for regulating the inspection of them and their use at fires.

Fire buckets.

32. For authorizing appointed officers to enter at all reasonable times upon any property, in order to ascertain whether the provisions of the by-law are obeyed, and to enforce or carry into effect the same.

Inspection of premises.

33. For suppressing fires, and for pulling down or demolishing buildings or other erections when deemed necessary to prevent the spread of fire.

Preventing spreading of fire.

See notes to s. 8 (liability for torts).

LIABILITY IN CASE OF BUILDINGS DEMOLISHED TO PREVENT THE SPREADING OF FIRE.

A municipal corporation is not liable to an action for anything lawfully done under the authority of this enactment, but the corporation would be liable to pay compensation under s. 325, because, by the pulling down or demolishing of the building or erection, land was injuriously affected by the exercise of a power of the corporation or of its council under the authority of the Act within the meaning of that section.

At common law there was no liability for pulling down a house, to save a city or town, if the next house were on fire, which every man might do without being liable to an action: 12 Coke's Rep. 13. The power conferred by par. 33 is wider. It is not confined to cases in which the next house is on fire, but may be exercised "when deemed necessary to prevent the spread of fire."

The law of Quebec would appear to be the same as that of Ontario: Quebec v. Mahoney (1901), Q.R. 10 K.B. 378; Guardian Assurance Company v. Chicoutimi (1915), 51 S.C.R. 562, 25 D.L.R. 322.

Article 4426 of the Revised Statutes of Quebec, 1888, provides that town corporations may pass by-laws "to authorize certain persons to cause to be blown up, pulled down or demolished such buildings as may appear necessary in order to arrest the progress of any fire, saving all damages and indemnity payable by the corporation to the proprietors of such buildings to an amount agreed upon between the parties or on contestation to an amount settled by arbitrators. In the absence of any by-law under this article, the mayor may, during the course of any fire, exercise this power by giving a special authorization."

This article is better than par. 33, in that it authorizes the power to be conferred on certain persons, and, in so doing, obviates complications that may arise under the Ontario Act owing to questions being raised as to the right to delegate the authority to determine whether it is necessary to exercise the power which par. 33 confers. It is probable that, as in the cases in which it would be proper to exercise the power, it would be manifestly impracticable for the council, as a body, to act, the power to appoint persons to act is included in the authority which par. 33 confers.

The law on this subject, as stated in Dillon on Corporations, 5th ed., ss. 1632-3-4-5, is that upon the principle *salus populi suprema est lex*, "In cases of imminent and urgent public necessity, any individual or municipal officer may raze or demolish houses and other combustible structures in a city or compact town to prevent the spreading of an existing conflagration. This he may do independently of statute and without responsibility to the owner for the damages he thereby sustains," and that there is no liability to compensate unless it is imposed by statute.

In Vallieres v. Montreal (1908), Q.R. 33 S.C. 250, which was the case of damage done to a building by water thrown upon a burning building for the purpose of extinguishing the fire, it was held that the measures taken by their officers and overseers authorized by law to fight fires do not render municipal corporations liable for any of the damages to burned properties and those adjoining. They are deemed to be the effect of *force majeure*.

Enforcing assistance at fires.

34. For regulating the conduct and enforcing the assistance of persons present, and for the preservation of property at fires.

Regulations.

35. For making such other regulations for preventing fires and the spread of fires as the council may deem necessary.

Harbours, Wharves, Waters, etc.—Removal of Obstructions from.

Removal of sunken vessels, etc., from harbours, etc.

36. For requiring and regulating the removal from any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water, of all sunken, grounded or wrecked vessels, barges, crafts, cribs, rafts, logs or other obstructions or incumbrances, by the owner,

charterer or person in charge, or any other person who ought to remove the same.

Milk and Bread Tickets, etc.

Milk and bread tickets.

37. For regulating the use of tickets, checks or coupons by vendors of or dealers in milk, bread, or other articles of food.

Naming and Surveying Streets.

Marking the boundaries of and naming streets, etc.

38. To provide for surveying, settling and marking the boundary lines of highways and giving names to them or changing their names, and for affixing the names at the corners thereof, on public or private property:

Proceedings for changing names of streets.

(*a*) A by-law for changing the name of a highway shall not have any force or effect unless passed by a vote of at least three-fourths of all the members of the council, or until a copy of it certified under the hand of the clerk and the seal of the corporation has been registered in the registry office of the proper registry division.

(*b*) A by-law for changing the name of a highway in a city or town shall state the reason for the change, and shall not be finally passed until it has been approved by a Judge of the County or District Court of the county or district in which the municipality is situate.

(*c*) The Judge, on the application of the council, shall appoint a day, hour and place for considering the by-law, and for hearing those advocating and opposing the change.

(*d*) A copy of the by-law and of the appointment shall be served on the registrar of the registry division in which the municipality is situate at least two weeks before the time appointed, and a notice of the application in such form as the Judge may approve shall be published once in the *Ontario Gazette* at least two weeks before the time so appointed, and at least once a week for four successive weeks in such other newspaper or newspapers as the Judge may direct.

(*e*) If the Judge approves of the change he shall so certify, and his certificate shall be registered with the by-law, and the change shall take effect from the date of the registration.

Numbering Houses and Lots.

Numbering houses, etc.

39. For numbering the buildings and lots along the highways and for affixing numbers to the buildings, and for charging the owner or occupant with the expense incident to the numbering of his building or lot.

(*a*) Such expense may be collected in the same manner as taxes, and if paid by the occupant, subject to any agreement between him and the owner, may be deducted from the rent payable to the owner.

Numbers and Record of Streets.

Record of streets, numbers, etc.

40. For keeping (and every such council shall keep) a record of the highways and of the numbers of the buildings and lots, and for entering therein (and every such council is hereby required to enter therein) a division of the streets with boundaries and distances for public inspection.

Pits and Quarries.

Pits and quarries.

41. For prohibiting the making of pits and quarries in the municipality or regulating the location of them.

(*a*) The making or locating of a pit or quarry in contravention of the by-law in addition to any other remedy may be restrained by action at the instance of the corporation.

Runners.

Importuning travellers.

42. For prohibiting persons from importuning on a highway or in a public place others to travel in or employ any vessel or vehicle,

or to go to any tavern or boarding house, or for regulating persons so employed. 3-4 Geo. V. c. 43, pars. 10-42.

The provisions of this paragraph were first enacted by 22 Vict. c. 99, s. 287 (27). Before that Act the corresponding provision did not extend to importuning to go to a tavern or boarding-house or to regulating persons so employed.

Sewer Rents.

Sewer rents.

43. For charging all persons who own or occupy land drained, or which by by-law of the council is required to be drained, into a common sewer, a reasonable rent for the use of it; for regulating the time and manner in which the rent is to be paid; for providing for the payment of a commutation of such rent or charging a gross sum in lieu of rent and for the payment of such commutation or gross sum either in cash or by instalments with interest.

(*a*) This paragraph shall not apply to a sewer constructed as a local improvement. 3-4 Geo. V. c. 43, s. 400, par. 43.

Sewer rents a charge on land.

(*b*) All sewer rents shall form a lien and charge upon the real estate upon or in respect of which the same have been assessed and rated or charged and shall be collected in the same manner and with the like remedies as ordinary taxes on real estate are collected under the provisions of *The Assessment Act*. 6 Geo. V. c. 39, s. 5.

Rev. Stat. c. 195.

Sidewalks—Horses and Cattle upon.

Driving, etc., upon sidewalks.

44. For prohibiting the leading, riding or driving of horses or cattle upon sidewalks or in other places not proper therefor. 3-4 Geo. V. c. 43, s. 400, par. 44.

Smoke Prevention.

Smoke prevention.

45. For requiring the owner, lessee, tenant, agent, manager or occupant of any premises in, or of a steam boiler in connection with which a fire is burning and every person who operates, uses or causes or permits to be used any furnace or fire, to prevent the emission to the atmosphere from such fire of opaque or dense

smoke for a period of more than six minutes in any one hour, or at any other point than the opening to the atmosphere of the flue, stack or chimney.

(*a*) This paragraph shall not apply to a furnace or fire used in connection with the reduction, refining, or smelting of ores or minerals or the manufacture of cement, or to dwelling houses, except apartment houses;

(*b*) No person shall incur a penalty for an infraction of the by-law (until 90 days after notice from the corporation of the existence of such by-law and such notice may be given by publication of the by-law in the *Ontario Gazette* and in a daily newspaper published in the municipality for four successive weeks). 3-4 Geo. V.. c. 43, s. 400, par. 45; 5 Geo. V. c. 34, s. 26.

The words in brackets were inserted by 5 Geo. V. c. 34 s. 26.

A Dominion railway company, in the operation of its locomotive engines, is not subject to a by-law passed under the authority of this paragraph. So held by Middleton, J., in Rex v. Canadian Pacific Railway Company (1914), 33 O.L.R. 248. On appeal to a Divisional Court, his judgment was affirmed on the ground that the by-law did not apply to a locomotive engine, and it was said by the Chief Justice that the Court expressed no opinion as to the reasons given for the judgment of the Court below: (1915) Ib. 25 D.L.R. 444, 24 Can. Cr. Cas. 226.

The ventilating flue in a round-house, constructed for the purpose of carrying away smoke or fumes from the round-house and conducting them to a place where they would be less objectionable, is not "a flue, stack or chimney" within the meaning of this paragraph: Rex v. Grand Trunk Railway Company (1916), 10 O.W.N. 374.

This case is now in appeal.

Spitting on Sidewalks, etc.

Spitting on sidewalks, public buildings, etc.

46. For prohibiting spitting on sidewalks and pavements, and in the passages and stairways of and entrances to public buildings, and in buildings, halls, rooms and places to which the public resort, in street cars and public conveyances, and in such other public places as may be designated in the by-law.

Stables, etc.

47. For regulating the location, erection and use of stables, garages, barns, outhouses and manure pits.

Location of stables, garages, etc.

In addition to this power, councils of cities, having a population of not less than 100,000, have power to prohibit or to regulate and control the location or erection of garages as provided by s. 410, par. 1.

Trading Stamps, Coupons, etc.

48. For prohibiting the giving, selling, or distributing of or the dealing with trading stamps, coupons, or other similar devices, by any person engaged in trade or business or the receiving of them.

Trading stamps and coupons.

(*a*) The by-law shall not apply to a merchant or manufacturer who places in or upon packages of goods, or delivers to purchasers of goods sold or manufactured by him at the time of the purchase, tickets or coupons, which state upon their face the place of delivery thereof, and the cash or merchantable value of them, and are redeemable at any time, but only by the merchant or manufacturer giving them and at the place where such goods were sold or purchased.

Merchants' premium coupons.

See notes to s. 249 (1) (constitutionality), referring to Wilder v. Montreal (1905), Q.R. 14 K.B. 139.

Traffic on Highways, etc., Driving of Cattle, etc.

49. For regulating traffic in the highways and the width of the tires and wheels of all vehicles used for the conveyance of articles of burden, goods, wares or merchandise; and for prohibiting heavy traffic and the use of traction engines and the driving of cattle, sheep, pigs and other animals in certain highways and public places named in the by-law, and for prohibiting traffic in any but one direction in highways which in the opinion of the council are too narrow for the passing of one vehicle by another.

Regulating traffic on streets and width of wheels.

See McMillan v. Portage La Prairie (1896), 11 Man. L.R. 216, noted under s. 249 (1) (necessity for by-law and other cases).

Reg. v. Pipe (1882), 1 O.R. 43, noted under s. 249 (1) (by-laws which discriminate).

Canadian Pacific Railway Company v. Toronto (1902), 1 O.W.R. 255, noted under s. 249 (1) (by-laws passed in breach of agreement, etc.).

Rex v. Maher (1905), 10 O.L.R. 102, noted under par. 5.

The power of a council to regulate the mode of user of the highways must be exercised in good faith in the interests of the public and the municipality, and not for ulterior purposes, and, when not so exercised, the by-law will be quashed: Bell Telephone Company v. Owen Sound (1904), 8 O.L.R. 74.

Allowing a boy under the age of sixteen to be in charge of a vehicle driven upon the streets, in contravention of a by-law passed under the authority of this paragraph, does not render the employer of the boy liable for an injury caused by the horse having run away, the object of the legislation being not for the protection of the driver, but of the public: Milligan v. Thorn (1914), 32 O.L.R. 195.

For a review of the cases bearing on the question of the reciprocal duties of the motorman and the drivers of vehicles crossing the tracks of a street railway, see Carleton v. Regina (1912), 5 S.L.R. 90, 1 D.L.R. 778, 20 W.L.R. 395, 1 W.W.R. 953, and the annotations to that case in D.L.R. and Balke v. Edmonton (1912), 4 A.L.R. 406, 1 D.L.R. 876, 21 W.L.R. 22, 2 W.W.R. 8.

See also 7 Geo. V. c. 48, s 3.

Watchmen.

Appointment of night-watchmen.

50. For employing and paying one or more watchmen to patrol at night, or between certain hours of the night, any highway or part of a highway, to be defined by the by-law and to guard and protect property; and for levying and collecting in the same manner and at the same time as taxes are levied and collected, by special rate, according to its assessed value, upon the land abutting on such highway or part of a highway within the limits defined by the by-law, except vacant lots, the expenses of or incidental to the employment of such night-watchmen.

Special rate for expenses.

Petition by ratepayers.

(*a*) The by-law shall not be passed except upon petition of two-thirds of the assessed owners and tenants of the land liable to be charged with the expenses, representing at least two-thirds of the assessed value of such land.

Proof of signatures.

(*b*) A petition shall not be acted on unless the signatures to it, and that the contents of it were made known to each person before signature, are proved by affidavit.

(*c*) As between the landlord and tenant, in the absence of any express agreement to the contrary, the tenant shall be liable for the expenses for the period of his occupation. Liability of tenant.

(*d*) When land is occupied by a tenant the owner shall not be entitled to petition. When owner not to petition.

Vacant Lots—Enclosure of.

51. For requiring vacant lots to be properly enclosed. 3-4 Geo. V. c. 43, s. 400, pars. 46-51. Vacant lots.

Water Tanks and Towers.

52. For regulating the construction, erection, alteration or repairing of water tanks and water towers whether on buildings or elsewhere, and for prohibiting the construction, erection, altering or repairing of same contrary to such regulations. 6 Geo. V. c. 39, s. 6. Water tanks and towers.

Markets, etc.

401. SUBJECT TO THE NEXT SUCCEEDING SECTION BY-LAWS MAY BE PASSED BY THE COUNCILS OF URBAN MUNICIPALITIES. Market by-laws.

1. For establishing, maintaining and regulating markets. Establishing markets.

It is not *ultra vires* a council, which has passed a by-law establishing a market, to amend the by-law so as to provide that the market square may be put, from time to time, to such uses as to the council may seem best in the interest of the public, and a by-law providing that a portion of a market should be used for the holding of shows, exhibitions, meetings and assemblies is within the authority and jurisdiction of the council to pass: Godden v. Toronto (1908), 12 O.W.R. 708.

A municipal council for the purpose of retaining in its municipality a manufacturing establishment, which had been destroyed by fire, passed a resolution, which was submitted to and approved by the ratepayers, by which the use was given to the proprietors, of a building which served as a public market and the land surrounding it for ten years, and, after the expiration of that period, they were to be the owners of the building and land on certain conditions. The resolution also provided for a fixed valuation for the purpose of taxation during the ten years.

The validity of this resolution was attacked upon the ground that the building and land, being a public market, were inalienable, or at least that the destination of them could not be changed, but it was held that the council had power to change the destination of the market, and that that was what was done by the resolution.

Lamontagne v. Levis (1916), Q.R. 49 S.C. 293.

See Bollander v. Ottawa (1898), 30 O.R. 7, (1900) 27 A.R. 335, in which it was held that a provision similar to par. 1 did not give power to prevent an auctioneer from exercising his calling in the markets in respect of any commodities which may be properly sold there.

Regulating vending in streets, etc.

2. For prohibiting or regulating the sale by retail in the highways or on vacant lots adjacent to them of any meat, vegetables, grain, hay, fruit, beverages, smallwares and other articles, and for regulating traffic in and preventing the blocking up of the highways by vehicles or otherwise.

Sale of grain, meat, farm produce, smallwares, etc.

3. For regulating the place and manner of selling and weighing grain, meat, vegetables, fish, hay, straw, and other fodder, wood, lumber, shingles, farm produce, smallwares and all other articles exposed for sale, and prescribing the fees to be paid therefor.

Leased butchers' stalls in a market are not part of the market within the meaning of regulations making all articles sold or exposed for sale in the market liable to pay toll. An agreement made in such a stall for the sale of vegetables to be subsequently delivered at the stall is not an offence against a by-law requiring all persons carrying articles for sale into the market to report to the deputy clerk of the market and pay toll, and forbidding all persons from selling or offering for sale any article without having a stand assigned and at any place except at the stand so assigned: Rex v. Manchester (1908), 38 N.B. 424, 4 E.L.R. 538.

Criers and vendors of smallwares.

4. For prohibiting criers and vendors of smallwares from practising their calling in the market place, or on the highways, or on vacant lots adjacent to the market place or to a highway.

In Rex v. Sang Chong (1909), 11 W.L.R. 231 (B.C.), it was held that a by-law providing that "no pedlar shall peddle any dairy produce except milk or garden or field produce or fruit in any part of the city before the hour of ten o'clock on any market day . . . and no person other than a consumer buying for his own use shall buy or bargain for any goods exposed in the market before the said hour of ten o'clock a.m." was not authorized by subs. 63 or subs. 66 of s. 125 of The Act of Incorporation of the City of Vancouver.

Subsection 63 authorized the passing of by-laws "for establishing markets and stock yards and for regulating the same, and subs. 66 authorized the passing of by-laws "for preventing or regulating criers and vendors of any vegetables . . . from practising their calling in any public markets, public sheds and vacant lots and the streets and lanes adjacent to the market."

It will be observed that subs. 66 gives much less power than par. 2 does. It limits the power to prohibit, as far as streets and lanes are concerned, to those adjacent to the market, while par. 2 extends to all highways.

5. For prohibiting the forestalling, regrating or monopoly of grain, wood, meat, fish, fruit, roots, vegetables, poultry, dairy products, eggs and all articles for family use, which are usually sold in the market, and for prohibiting or regulating the purchase of such things by hucksters, grocers, butchers, runners or wholesalers, or by persons who directly or indirectly purchase or acquire them for re-sale.

Prohibiting forestalling, etc.

Hucksters, etc.

(*a*) Farmers and other producers may nevertheless sell such things at stores and shops at any time.

Proviso.

6. For regulating the measuring or weighing of lime, shingles, laths, cordwood, coal and other fuel.

Measuring, etc., certain articles.

Where there has been a complete sale of any of the articles mentioned in this paragraph made beyond the limits of the municipality, and the only act done within it is the delivery, there is no right to require that the article shall be weighed upon the market scales and be subject to the fees for weighing fixed by the by-law, and a by-law which assumes to require that to be done is invalid: Rex v. Woollatt (1906), 11 O.L.R. 544.

Under subs. (*f*) of s. 654 of The Municipal Act, R.S.M. 1902, c. 116, the council of a town may pass a by-law requiring that all coal in the town shall, before delivery, be weighed on the public weigh scales, which the town is authorized by subs. (*i*) of s. 632 to establish, and that the person delivering such coal shall, at the time of delivery, hand to the purchaser a certificate of the true weight signed by the public weigh master. The power to regulate the sale of coal enables the council to make these provisions. They cannot be regarded as in restraint of trade. The by-law is not in contravention of s. 368, as creating a monopoly in the weighing of coal, being only part of the machinery for the administration of the public affairs of the town: In re Miller and Virden (1906), 16 Man. L.R. 479, 5 W.L.R. 49.

A by-law requiring all coal sold in the municipality to be weighed on the corporation's scales before being sold is invalid, the power conferred by municipal ordinance R.O. c. 70, s. 91 (16), not extending beyond compelling dealers in coal to weigh on the municipality's scales when requested by the purchaser.

Where there was authority to compel dealers in coal to weigh on the corporation's scales, if requested by the purchaser, and there was no request by the purchaser, a conviction under the by-law was quashed: Rex v. Frankfeldt (1910), 13 W.L.R. 108.

Penalties for light weight, etc.

7. For imposing penalties for light weight or short count or measurement in anything marketed.

Seizing articles of light weight, etc.

8. For seizing and forfeiting any articles, except bread, of light weight or short measure.

Regulating vehicles used in market vending.

9. For regulating vehicles, vessels, and other things in which anything is exposed for sale or marketed and for imposing a reasonable duty thereon, and establishing the mode in which it shall be paid.

Sale of meat distrained.

10. For selling, after six hours' notice, butchers' meat distrained for rent of a market stall. 3-4 Geo. V. c. 43, s 401.

In the notes to this section only such cases as appear to be likely to be helpful under present conditions have been mentioned. Earlier cases of little or no practical importance are not referred to, but any one desiring to consult them will find them noted in Biggar's Municipal Manual, pp. 713 to 729 (inc.), under ss. 579, 580-1.

No market fees to be imposed on certain products.

402.—(1) No market fee shall be imposed, levied or collected, in respect of wheat, barley, rye, corn, oats, or any other grain, hay or other seed, wool, lumber, lath, shingles, cordwood or other firewood, dressed hogs, cheese, hay, straw or other fodder, brought to market, or upon the market place, for sale or other disposal.

When fees may be charged on butter, etc., brought to market.

(2) No market fee shall be imposed, levied or collected in respect of butter, eggs, poultry, honey, celery, small fruits or other articles in hand baskets, brought to market, or upon the market place, for sale or other disposal, unless a convenient and fit place affording shelter in summer, and shelter and reasonable protection from the cold in winter, in which to expose them for sale is provided by the corporation.

Fees not to be charged on articles delivered in pursuance of prior contract.

(3) Where the vendor of an article brought within the municipality in pursuance of a prior contract for the sale of it proceeds directly to the place of delivery, without hawking it upon the highways or elsewhere in the municipality, no market fee shall be imposed, levied, or collected in respect of it.

Nor on articles brought into municipality after 10 a.m.

(4) No market fee shall be imposed, levied or collected in respect of any article brought into the municipality after ten o'clock in the forenoon, unless it is offered or exposed for sale upon the market place.

When articles need not be weighed or measured.

(5) No by-law shall require hay, straw or other fodder to be weighed, or wood to be measured, where neither the vendor nor the purchaser desire to have it weighed or measured.

Time after which attendance on market not required.

(6) A person who has exposed or offered for sale an article in the market place and has paid the prescribed fee, if any, in espect of it may, after nine o'clock in the forenoon, between the 1st day of April and the 1st day of November, and after ten o'clock in the forenoon, between the 1st day of November and the 1st day of April, sell such article elsewhere than in the market place.

Scale of market fees.

(7) No market fees may be imposed, levied or collected, higher than those contained in the following scale:—

On a motor vehicle or a vehicle drawn by more than one horse or other animal in which articles are brought to the market place	10 cents.
If the vehicle is drawn by one horse or other animal	5 cents.
Upon a vehicle propelled or drawn by hand or a basket or vessel in which articles are brought to the market place	2 cents.
Upon the person bringing articles to the market place by hand and not in a vehicle, basket, or vessel	2 cents.
Upon live stock brought to the market place for sale:—	
A horse, mare, or gelding	10 cents.
A head of horned cattle	5 cents.
A sheep, calf, or swine	2 cents.

Scale of fees for weighing or measuring.

(8) No fees may be imposed, levied or collected for weighing or measuring, greater than those contained in the following scale:—

For weighing a load of hay	15 cents.
For weighing slaughtered meat, or grain, or other articles exposed for sale, if weighing less than one hundred pounds	2 cents.
If weighing more than one hundred and less than one thousand pounds	5 cents.
If weighing more than one thousand pounds	10 cents.
For weighing live animals, other than sheep or swine, per head	3 cents.
For weighing sheep or pigs, if more than five, per head	1 cent.
If less than five, for the lot	4 cents.
For measuring a load of wood	5 cents.

Subsection 1 not to apply where by-law in force allowing sale without fee except at the market;

(9) Subsection 1, shall not apply to a municipality in which there is in force a by-law providing that vendors of articles in respect of which under the provisions of paragraph 3 of section 401, a market fee may be imposed, may, without paying market fees, offer for sale and sell or otherwise dispose of such articles, at any place within the municipality, excepting only at the market place.

but such by-law may impose fees on persons voluntarily using market; and on others selling within 100 yards of market.

(10) Subject to subsection 2, the council of a municipality to which subsection 9 applies, may by by-law provide for imposing, levying and collecting market fees from such vendors who voluntarily use the market place for selling such articles or from any person who or whose vehicle remains upon that part of a highway which is within 100 yards of the market place, for the purpose of selling any of such articles other than grain, seeds, dressed hogs or wool upon such highway, but driving through or across such part of a highway shall not authorize the imposition of any market fee; nor shall any market fee be imposed in respect of an article sold to a person carrying on business and having a

Exception as to sales to persons carrying on business near market.

bona fide store, shop or other similar place of business on such part of a highway.

Fees not to be charged where highway used as market.

(11) Where a highway is used as a market place or market, or part of a market place or market, no market fees shall be imposed, levied or collected upon articles brought to that part of the highway which is so used, but this subsection shall not apply to so much of a highway as adjoins or abuts upon a market square established as a market place.

Case of municipality again imposing market fees.

(12) Subsections 9 to 11 shall not apply to any municipality where no market fees were charged or imposed on the 10th day of March, 1882, but subsections 1 to 8 and 13 and 14 of this section shall apply to such municipality in the event of market fees being thereafter charged or imposed therein.

Power to regulate sales when no fees are charged.

(13) Nothing in the preceding subsections contained shall prevent any municipality wherein no market fees are imposed or charged from regulating the sale and the place of sale of any articles within the municipality to the same extent as it might do before the 10th day of March, 1882;

Proviso.

(*a*) Market fees within the meaning of this subsection shall not include fees for weighing or measuring;

Proviso.

(*b*) After nine o'clock in the forenoon, between the 1st day of April and the 1st day of November, and after ten o'clock in the forenoon between the 1st day of November and the 1st day of April, no person shall be compelled to remain on, or resort to, any market place with any articles which he may have for sale, but may, after the expiration of such hour, sell or dispose of such articles elsewhere than in or on said market places.

Inconsistent enactments not to apply.

(14) Whenever subsections 1 to 8 or subsections 9 to 11 of this section are in force in any municipality, so much of any Act or law as may be contrary to, and as conflicts with the same, shall not be in force in or apply to such municipality.

Right to sell or lease market fees.

(15) A corporation may sell or lease its market fees with the right to collect them. 3-4 Geo. V. c. 43, s. 402.

403. By-laws may be Passed by the Councils of Counties, Cities and Towns.

Educational Institutions—Aid to.

Grants to universities, colleges, historical societies, etc.

1. For making grants in aid of the University of Toronto or of Upper Canada College, or of any other university or college in Ontario, or of any historical, literary, or scientific society.

(*a*) Such grants may be made from time to time, and may be either by one payment, or by an annual payment for a limited number of years, and upon such terms and conditions as may be agreed upon and may include supplying Upper Canada College with water from the waterworks of the city of Toronto, without charge.

Endowing Fellowships.

Endowing fellowships, etc., in universities and colleges.

2. For endowing fellowships, scholarships or exhibitions, and other similar prizes, in the University of Toronto, or in Upper Canada College, or in any other university or college in Ontario, for competition among the pupils of the collegiate institutes and high schools in the municipality.

Aid to art schools.

3. For granting aid to art schools, approved by the Department of Education.

Aid to industrial schools.

Rev. Stat. c. 271.

4. For granting aid, for the erection, establishment or equipment of an industrial school, to any philanthropic society, within the meaning of *The Industrial Schools Act*, upon the board of which the council is represented.

Supporting Pupils at High Schools, Universities and Colleges.

Supporting certain high school pupils at univer-

5. For making permanent provision for defraying the expenses of the attendance at the University of Toronto or at Upper Canada

College, or at any other university or college in Ontario, of such of the pupils of any collegiate institute or high school of the municipality as are unable to incur the expense, but are desirous of, and in the opinion of the head master thereof possess competent attainments for, competing for any scholarship, exhibition or other similar prize offered by such university or college.

sities, colleges, etc.

6. For making similar provision for the attendance at any collegiate institute or high school, for the like purpose, of pupils of public schools of the municipality. 3-4 Geo. V. c. 43, s. 403.

Similar provision for attendance at high schools.

404. BY-LAWS MAY BE PASSED BY THE COUNCILS OF TOWNS, VILLAGES AND TOWNSHIPS.

Education.

1. For making grants in aid of, or to build, preserve, enlarge or improve any collegiate institute or high school in another municipality. 3-4 Geo. V. c. 43, s. 404.

Grants to high schools.

405. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES AND CITIES.

Horse Thieves.

1. For paying on the conviction of the offender and on the order of the Judge or police magistrate before whom the conviction is had a reward of not less than $20 to any person who pursues and apprehends, or causes to be apprehended, any person horse stealing within the municipality.

Reward for apprehension of persons guilty of horse stealing.

(*a*) The amount payable as the reward shall be in the discretion of the Judge or police magistrate, but shall not exceed the amount fixed by the by-law. 3-4 Geo. V. c. 43, s. 405.

Proviso.

406. BY-LAWS MAY BE PASSED BY THE COUNCILS OF CITIES AND TOWNS.

Bicycles, etc.

Par. 1 *was repealed by* 7 *Geo. V. c.* 48, *s.* 5.

This paragraph gave power to regulate use of bicycles and other vehicles not drawn by horses on the highways.

The Highway Travel Act as amended by 7 Geo. V. c. 48 takes the place of the repealed paragraph.

Par. 2 *was repealed by* 5 *Geo. V. c.* 34, *s.* 27, *see now par.* 9*a of sec.* 400.

Drunk and Disorderly Person.

Release without trial of persons arrested for drunkenness.

3. For providing that the chief constable or any member of the police force in charge of a police station to which a person is brought charged with being drunk without being disorderly may release him without bringing him before a justice of the peace or police magistrate. 3-4 Geo. V. c. 43, s. 406, par. 3.

Fuel Yards.

Par. 4 *was repealed by* 7 *Geo. V. c.* 42, *s.* 12 (1).

See s. 399, par. 39*a*.

Garbage Collection.

Removal of ashes, garbage, etc.

5. For establishing and maintaining a system for the collection, removal and disposal at the expense of the corporation [of garbage or of garbage and other refuse or] of ashes, garbage and other refuse, and with the approval of the Provincial Board of Health for erecting and maintaining such buildings, machinery and plant as may be deemed necessary for that purpose, or for contracting with some person for the collection, removal and disposal by him of the ashes, garbage and other refuse upon such terms and conditions and subject to such regulations as may be deemed expedient.

(*a*) Where the amount required for the erection of such buildings, machinery and plant and for acquiring the requisite land exceeds $5,000, the by-law shall not be finally passed without the assent of the electors entitled to vote on money by-laws. 3-4 Geo. V. c. 43, s. 406, par. 5; 7 Geo. V. c. 42, s. 14 (1).

The words in brackets were added by 7 Geo. V. c. 42, s. 14 (1).

Special rate for cost of.

6. For the collection, removal and disposal by the corporation [of garbage or of garbage and other refuse or] of ashes, garbage and other refuse throughout the whole municipality or in defined areas of it at the expense of the owners and occupants of the land therein, and for imposing upon such land according to its assessed value a special rate to defray the expense of such collection, removal and disposal.

The words in brackets were added by 7 Geo. V. c. 42, s. 14 (2).

No land exempt.

(*a*) Subject to clause (*c*), no land shall be exempt from the special rate, anything in any general or special Act or in any by-law to the contrary notwithstanding.

The words "Subject to clause (*c*)" were added by 7 Geo. V. c. 42, s. 15.

Recovery of special rate.

(*b*) The special rate may be collected or recovered in the manner provided by section 500. 3-4 Geo. V. c. 43, s. 406, par. 6; 7 Geo. V. c. 42, s. 14 (2) and s. 15, *part*.

Special rate on churches.

(*c*) In the case of a place of worship the council may by by-law provide that the special rate shall be imposed upon the land according to its assessed value exclusive of the assessed value of the buildings. 7 Geo. V. c. 42, s. 15, *part*.

A by-law which prohibits householders from disposing of their productive waste, such as table waste, is bad: In re Jones and Ottawa (1907), 9 O.W.R. 323, 660.

In In re Knox and Belleville (1913), 5 O.W.N. 237, 25 O.W.R. 201, a by-law passed under this section, which seemed only to contain a direction to the garbage collector and delegated authority to the Sanitary Inspector and the Board of Health as to matters purely ministerial, was held to be not open to objection.

Councils of villages have the powers conferred by pars. 5 and 6: secs. 411*a*, par. 2.

Laundrymen.

Licensing, etc., of laundries.

7. For licensing, regulating and governing laundrymen and laundry companies and for inspecting and regulating laundries;

(*a*) The by-law shall not apply to or include women carrying on a laundry business in private dwelling houses, and employing female labour only, or to such dwelling houses.

(*b*) The by-law may provide that a license shall not be granted, if it is deemed that the location of the laundry is an undesirable one.

It has been held that authority to pass by-laws for controlling, regulating and licensing certain businesses "and all other business industries or callings carried on or to be carried on within the municipality" does not authorize the passing of a by-law imposing a license fee of $25 per annum on every person carrying on a laundry business, inasmuch as it would be unreasonable and oppressive, as many women in destitute circumstances, who earn a meagre support by taking in washing, would be included in its terms: In re Song Lee and Edmonton (1903), 5 Terr. L.R. 466.

Lavatories, etc.

Maintaining public conveniences in cities and towns.

8. For constructing and maintaining lavatories, urinals, water closets and like conveniences, where deemed requisite, upon the highways or elsewhere, and for supplying them with water, and for defraying the expense thereof and of keeping them in repair and good order.

In an action to restrain a municipal corporation from constructing a public convenience on municipal property, brought by the owners of an adjoining lot, on which they contemplated building, on the ground that substantial and special injury would be suffered by them (apart from that suffered by the general public by the convenience), in that the odours from the convenience would be offensive and that the building, being on an alleged public highway, would obstruct the approach to the plaintiff's proposed building, it was held that such a public convenience was not *per se* a nuisance, and, in any event, it could not be so considered, as the building was not yet erected, and the action was, therefore, premature: British Canadian Securities v. Victoria (1911), 16 B.C.R. 441, 19 W.L.R. 242.

See also In re Brown and Toronto (1916), 36 O.L.R. 189, 29 D.L.R. 618, noted under s. 325 (claim for compensation for injurious affection by erection of lavatory in highway).

Lifeboat Associations.

Aid to lifeboat association.

9. For granting aid to any organization owning, manning and working lifeboats or other apparatus for life saving purposes. 3-4 Geo. V. c. 43, s. 406, pars. 5-9.

Massagists, Massage Parlours.

Licensing and regulating massagists, etc.

9*a*. For licensing, regulating and governing massagists and for inspecting and regulating massage parlours, and such by-laws may provide for the enforcement thereof through the Medical Health Department or Police Department of the city or town. 6 Geo. V. c. 39, s. 7.

Residential Streets and Building Line.

Setting apart residential streets. Fixing building line.

10. For declaring any highway or part of a highway to be a residential street, and for prescribing the distance from the line of the street in front of it at which no building on a residential street may be erected or placed.

(*a*) It shall not be necessary that the distance shall be the same on all parts of the same street.

(*b*) The by-law shall not be passed except by a vote of two-thirds of all the members of the council.

In In re Dinnick and McCallum (1913), 28 O.L.R. 52, 11 D.L.R. 509, the question was as to whether a building fronted on a residential street as to which there was a building line prescribed by by-law. It was to be erected on a corner lot, which fronted on another street, but abutted on one side on the residential street, and the front of the building was on the former of these, and it was held, reversing (1912), 26 O.L.R. 551, 5 D.L.R. 843, that a building so erected would not, within the meaning of this provision, front on the residential street.

It was also held, in the same case, that a by-law which prohibited the erection of buildings fronting or abutting on a street, as to which there was a building line prescribed, was as to the word "abutting" unauthorized.

This case was followed in In re Charlton and Toronto (1914), 7 O.W.N. 174.

Where a building is well within the building line prescribed by a by-law passed under the authority of this paragraph, the erection of steps in front of it for use as a means of access to the front door and extending beyond the building line, the steps not being more than four feet six inches above the ground level, is not a contravention of the by-law: In re Masonic Temple Company and Toronto (1915), 33 O.L.R. 497, 22 D.L.R. 458.

Councils of villages have the power conferred by par. 10: see s. 411*a*, par. 1.

See also In re Wood and Winnipeg (1911), 21 Man. L.R. 426, 17 W.L.R. 220, 19 W.L.R. 366, noted under s. 249 (1) (unreasonable or oppressive by-laws).

"Properties fronting" on the line of a street include properties adjoining or contiguous to the line of the street on any side, although the buildings thereon front on a street intersecting the other, and the properties are only bounded on the side line by the street first mentioned: Watson v. Maze (1898), Q.R. 15 S.C. 268.

In the same case it was held that the word "widening," in reference to a street, having been used in a statute evidently by inadvertence for "opening," the statute should be interpreted so as to give effect to the intention of the legislature.

Sewerage System—Management of by Commissioners.

Commissioners to manage sewerage system. Rev. Stat. c. 204.

11. Where the sewerage system includes the disposal or purification of sewage upon a sewage farm by filtration or other artificial means, for placing the management of it under a commission established under *The Public Utilities Act.*

(*a*) The by-law shall not be passed without the assent of the municipal electors.

Superannuation and Benefit Funds.

Superannuation and benefit funds for fire and police force.

12. For granting aid for the establishment and maintenance of superannuation and benefit funds for the members of the police force and of the fire brigade, and of other officers and employees

of the corporation, and of their wives and families. 3-4 Geo. V. c. 43, s. 406, pars. 10-12.

Surveyors and Engineers.

Corporation surveyor and engineers.

13. For appointing an Ontario land surveyor as surveyor for the corporation and for appointing one or more engineers. 3-4 Geo. V. c. 43, s. 406, par. 13, *part.*

Power of engineer.

(*a*) An engineer so appointed and his assistants shall in the performance of their duties possess all the powers, rights and privileges which a surveyor possesses under the provisions of section 6 of *The Surveys Act.* 4 Geo. V. c. 33, s. 12.

Rev. Stat. c. 166.

406*a*. BY-LAWS MAY BE PASSED BY THE COUNCIL OF CITIES.

The section applied only to cities having a population of not less than 200,000, but the words "having a population fo not less than 200,000" were struck out by 7 Geo. V. c. 42, s. 16.

Licensing users of wheeled vehicles.

1. (*a*) Requiring all residents in the municipality owning and using any wheeled vehicle to obtain a license therefor before using the same upon any highway of the city.

(*b*) Regulating the issuing of such licenses and the collection of fees therefor.

(*c*) Fixing an annual fee not exceeding $1.00 for such licensees, which shall be approved of by the Ontario Railway and Municipal Board.

(*d*) Fixing a scale of fees for different vehicles.

(*e*) Imposing penalties not exceeding $5.00 exclusive of costs upon all persons who contravene any such by-law.

(*f*) Providing that such penalties may be recoverable in the manner provided by this Act.

Case of building encroaching on highway.

2. For allowing any person owning or occupying any building or other erection which by inadvertence has been wholly or

partially erected upon any highway to maintain and use such erection thereon and for fixing such annual fee or charge as the council may deem reasonable for such owner or occupant to pay for such privilege.

(*a*) Such fee or charge shall form a charge upon the land used in connection therewith and shall be payable and payment of it may be enforced in like manner as taxes are payable and the payment of them may be enforced, but nothing herein contained shall effect or limit the liability of the municipality for all damages sustained by any person by reason of any such erection upon any highway.

Use of highway or boulevard for building purposes.

3. (*a*) For permitting the use of a portion of any highway or boulevard by the owner or occupant of land adjoining such highway or boulevard during building operations upon such land for the storage of materials for such building or for the erection of hoardings.

(*b*) To fix a fee or charge for such use according to the area occupied and the length of time of such occupation and to collect the same.

(*c*) To regulate the placing of such materials or hoardings, the restoration of such highway or boulevard to its original condition, the payment of such fee or charge, and the giving of permits for such privilege.

A permit of the engineer to obstruct a street for building purposes, given under the authority of a municipal by-law, is a justification for the obstruction: Coulstring v. Nova Scotia Telephone Company (1909), 7 E.L.R. 113 (N.S.).

4. For licensing and regulating the owners of public garages, and for fixing the fees for such licenses, and for imposing penalties for breaches of such by-law and for the collection thereof.

(*a*) For the purpose of this paragraph, a public garage shall include a garage where motor cars are hired or kept or used for hire, or where such cars, or gasoline, oils, or other accessories are stored or kept for sale. 4 Geo. V. c. 33, s. 13. 7 Geo. V. c. 42, s. 16.

"Regulating." See notes to S. 416 (1).

407. BY-LAWS MAY BE PASSED BY THE COUNCILS OF TOWNS AND VILLAGES.

Fire Engines, etc.

By-laws for purchase of fire engines and appliances

1. For purchasing fire engines, and (for purchasing and installing) apparatus or appliances and appurtenances for fire protection at a cost not exceeding $5,000, and for the issue of debentures therefor, payable in equal annual instalments of principal and interest during a period not exceeding ten years.

(*a*) It shall not be necessary to obtain the assent of the electors to the by-law if it is passed by a two-thirds vote of all the members of the council. 3-4 Geo. V. c. 43, s. 407, par. 1; 5 Geo. V. c. 34, s. 28.

"Two-thirds vote." See s. 2 cl. (5).

The words in brackets were inserted by 5 Geo. V. c. 34, s. 28.

Vehicles Used for Hire, etc.—Livery and Boarding Stables.

Licensing, etc., teamsters, etc.

2. For licensing, regulating and governing teamsters, carters and dray men, drivers of cabs and other vehicles for hire, and regulating the charges for the conveyance of goods or for other services by them.

Where a license is issued to an owner or driver of a cab, and, while the license is current, a by-law is passed providing that no owner or driver shall loiter about the streets with his cab, the licensee is not, during the currency of his existing license, subject to the provisions of the by-law. So held by Lennox, J., in Rex v. Aitcheson (1915), 9 O.W.N. 65, 25 Can. Cr. Cas. 36.

Licensing livery stables, cabs, etc.

3. For licensing, regulating and governing the keepers of livery stables, and of horses and cabs, carriages, omnibuses and other vehicles used or kept for hire; for regulating the fares to be

charged for the conveyance of goods or passengers, and for enforcing payment therof;

Prohibited areas.

4. For defining districts within which a livery or boarding stable shall not be established. 3-4 Geo. V. c. 43, s. 407, pars. 2-4.

It has been held that a by-law which prohibited the establishment or keeping of a livery stable unless the applicant for a license procured the consent of the majority of the owners and lessees of property situate within 500 feet of the stable was *ultra vires* (In re Kiely (1887), 13 O.R. 451), the reason for the decision being that the effect of this requirement was to constitute these persons the judges of the right for which the applicant asked, and divested the enacting body of the power which they were required personally to exercise.

This case was followed in Reg. v. Webster (1888), 16 O.R. 187, noted under s. 400, par. 23.

408. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES.

Booms—Protection and Regulation of.

Protecting booms.

1. For protecting and regulating booms on any stream or river for the safe keeping of timber, saw-logs and staves.

Fences.

Fences. Rev. Stat. c. 211.

2. For the exercise in respect of fences along highways under the jurisdiction of the council, of the powers conferred upon the councils of local municipalities by paragraph 29 of section 399 and by *The Snow Fences Act.*

Guaranteeing Debentures.

Guaranteeing debentures.

3. For guaranteeing debentures of any local municipality in the county.

Poles and Wires.

Regulating erection of poles, towers, wires, etc., on county roads.

Rev. Stat. c. 197.

4. Subject to *The Municipal Franchises Act* for permitting and regulating the erection and maintenance of electric light, power, telegraph and telephone poles, towers and wires on, and the laying of pipes or conduits for the conveyance of water, gas or sewage under, the highways, under the jurisdiction of the council.

See notes to s. 399 pars. 17, 50 and 51.

Publicity Purposes.

Annual expenditure for diffusing information.

5. For expending for the purposes mentioned in section 428 and for diffusing information respecting the advantages of the county as an agricultural centre a sum not exceeding in any year $3,000.

Traffic—Regulation of; Licensing Livery Stables, etc.

Regulation of traffic on certain county roads.

6. If there are gravel or macadamized highways under the jurisdiction of the council, and under its immediate control, which are being kept up and repaired by municipal taxation, and upon which no toll is collected;

Licensing livery stables.

(*a*) For licensing, regulating and governing the keepers of livery stables, and of horses, cabs, carriages, onmibuses and other vehicles used or kept for hire, and teamsters;

Rates of fare.

(*b*) For regulating the fares to be charged for the conveyance of goods or passengers;

Tires.

(*c*) For regulating the traffic on such highways and the width of the tires on the wheels of vehicles used for the conveyance of articles of burden, goods, wares, or merchandise on such highways; and

Lock shoes.

(*d*) For regulating the use of lock shoes on vehicles used on such highways. 3-4 Geo. V. c. 43, s. 408.

See also 7 Geo. V. c. 48, s. 3.

Seeds—Refuse from Cleaning of.

Refuse from grass or clover seed.

7. For compelling the destruction or regulating the disposal of the refuse obtained in the process of cleaning grass or clover seed. 7 Geo. V. c. 42, s. 17.

409. BY-LAWS MAY BE PASSED BY THE COUNCILS OF CITIES.

Commissioner of Industries.

Commissioner of Industries.

1. For the establishment and maintenance of a department of industries and for appointing a Commissioner of Industries to

bring to the notice of manufacturers and others the advantages of the city as a location for industrial enterprises, summer resorts, residential, educational and other purposes.

Location of Stables, etc.

Location of livery stables, etc.

2. For regulating and controlling the location, erection and use of buildings as livery, boarding or sales stables, and stables in which horses are kept for hire or kept for use with vehicles in conveying passengers, or for express purposes, and stables for horses for delivery purposes, laundries, butcher shops, stores, factories, blacksmith shops, forges, dog kennels, hospitals or infirmaries for horses, dogs or other animals and for prohibiting the erection or use of buildings for all or any or either of such purposes within any defined area or areas or on land abutting on any defined highway or part of a highway;

(*a*) The by-law shall not be passed except by a vote of two-thirds of all the members of the council;

(*b*) This paragraph shall not apply to a building which was on the 26th day of April, 1904, erected or used for any of such purposes, so long as it is used as it was used on that day. 3-4 Geo. V. c. 43, s. 409, pars. 1, 2.

In this paragraph "stores" is used as synonymous with "shops." The broad meaning of "shop" is : (1) A building appropriated to the selling of wares at retail; and (2) a building in which making or repairing of an article is carried on, or in which any industry is pursued, *e.g.*, machine shop, repair shop, barber's shop. A building for the purpose of storing machinery, furniture, etc., for safe keeping is not a store within the meaning of this paragraph: In re Hobbs and Toronto (1912), 4 O.W.N. 31, 6 D.L.R. 8, 23 O.W.R.8.

The use of a room in a dwelling-house as a sewing-room for three or four persons, who make up clothes for customers who furnish the material, does not constitute the premises either a "manufactory" or a "store" within the meaning of a by-law which prohibits the location, erection or use of manufactories or stores in certain districts: Toronto v. Foss (1912), 27 O.L.R. 264, 5 D.L.R. 447, 8 D.L.R. 641, (1913) 27 O.L.R. 612, 10 D.L.R. 627.

Where a council is empowered to pass by-laws defining the limits within which laundries or wash-houses may be established, maintained or operated a by-law providing that no building or structure of any kind shall be "constructed and used" for a laundry or wash-house within a specified part of the municipality is *ultra vires:* In re Glover and Sam Kee (1914), 20 B.C.R. 219, 22 Can. Cr. Cas. 297, 27 W.L.R. 886, 5 W.W.R. 1276.

Under this paragraph "the council is to act and determine in a general way and by by-law and not in a particular instance and by permit": per Riddell, J., in Beamish v. Glenn (1915-6), 36 O.L.R. 10, 18, 28 D.L.R. 702, and the permission of the council granted for the erection of a blacksmith shop, or the fact that the shop is not upon a place forbidden by by-law, is not an answer to an action to restrain the carrying on of blacksmithing in it so as to cause a nuisance.

Regulation, etc., of plumber shops, etc.

2*a*. Paragraph 2 of this section shall also apply to plumber shops, machine shops, tinsmith shops, moving picture or other theatres and buildings used for the storage of builder's plant; but this paragraph shall not apply to a building which was on the 1st day of May, 1914, erected or used for any of such purposes so long as it is used as it was used on that day. 4 Geo. V. c. 33, s. 14.

Regulating location of private hospitals, dance halls and undertakers' establishments.

2*b*. Paragraph 2 of this section shall also apply to private hospitals, public dance halls and undertakers' establishments, and for the purpose of this paragraph, any hall, room, or building in which dancing is carried on for which a fee is charged or to which any admission fee is demanded or paid, shall be deemed a public dance hall, but this paragraph shall not apply to a building which was on the 1st day of May, 1916, erected or used for any of such purposes nor to any building the plans for which have been approved of by the city architect prior to the 1st day of May, 1916. 6 Geo. V. c. 39, s. 8.

Not to prevent extension of building.

2*c*. The passing of a by-law under this section shall not prevent the extension or enlargement of any building used for any of the purposes mentioned in this section at the time of the passing of the by-law.

Prohibiting sale of goods.

2*d*. For prohibiting the sale of goods, wares and merchandise on any private lands within any defined area or areas, or on lands abutting on any defined highways or part of a highway, to which any by-law passed under paragraphs 2, 2*a*, or 2*b* of this section applies. 7 Geo. V. c. 42, s. 18.

Sidelights on Vehicles.

Vehicles to carry sidelights at night.

3. For requiring all vehicles using the public streets after dusk and before dawn to carry lighted side lights plainly visible from in front of and from behind such vehicles.

Tussock Moths.

Destruction of tussock moths.

4. For requiring persons to destroy all tussock moths and the cocoons thereof on trees or elsewhere upon the premises owned or occupied by them. 3-4 Geo. V. c. 43, s. 409, pars. 3, 4.

410. BY-LAWS MAY BE PASSED BY THE COUNCILS OF CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Apartment Houses, Tenement Houses and Garages.

Location of apartment houses and garages.

1. For prohibiting or for regulating and controlling the location or erection within any defined area or areas or on land abutting on defined highways or parts of highways of apartment or tenement houses and of garages to be used for hire or gain.

(*a*) For the purposes of this paragraph an apartment or tenement house shall mean a building proposed to be erected or altered for the purpose of providing three or more separate suites or sets of rooms for separate occupation by one or more persons.

In addition to the powers conferred by this paragraph, councils of urban municipalities have power to regulate the location, erection and use of garages: s. 400, par. 47.

A similar power to that conferred by this paragraph as to "the location on certain streets to be named in the by-law of garages to be used for hire or gain" was given by 2 Geo. V., c. 40, s. 10, which came into force on the 16th April, 1912. Before it came into force the defendant had entered into treaty for the purchase of land, on which to erect a garage of the character mentioned in the section, and had submitted plans of his proposed building to the city architect, and on the 17th April he had obtained a building permit authorizing the construction of the building in accordance with the plans and specifications submitted. He then completed his purchase of the land and entered into contracts for the erection of the building, and, when a motion for an injunction came on to be heard, the excavation was well under way. A by-law in the terms of the statute was passed on the following 13th May, and an action was brought by the corporation to restrain the erection of the building. The action was dismissed, the view of the trial Judge being that, in the circumstances, what had been done before the passing of the by-law constituted a complete "location" of the garage. He also expressed the opinion that "location" was used in some sense differing from "erection and use": Toronto v. Wheeler (1912), 3 O.W.N. 1424, 4 D.L.R. 352, 22 O.W.R. 326.

It will be noticed that since this decision the section had been amended by including "erection."

A different view as to the meaning of "location" was taken by a Divisional Court, in Toronto v. Williams (1912), 27 O.L.R. 186, 8 D.L.R. 299, and it was there held that the location "was not completed by the obtaining of the permit, coupled with the design or intention" to build, "and that the permit could not be regarded as an estoppel," and that case was approved by a Divisional Court in Toronto v. Ford (1913), 4 O.W.N. 1386, 12 D.L.R. 841, 24 O.W.R. 717.

A garage to be used by the tenants of an apartment house is not a garage "to be used for hire or gain" within the meaning of this paragraph: Toronto v. Delaplante (1913), 5 O.W.N. 69, 25 O.W.R. 16.

The staking out of a site for a building, entering into contracts with builders, and the commencement of the work of excavation, particularly the making of a trench for the foundation walls, is a "location" within the meaning of this paragraph: Toronto v. Stewart (1913), 4 O.W.N. 1027, 10 D.L.R. 193 24 O.W.R. 323.

See also In re Maycock and Winnipeg (1914), 24 Man. L.R. 646, 6 W.W.R. 1430, noted under s. 249 (1) (unreasonable or oppressive by-laws).

Building Restrictions—Deviation from.

Deviation from by-law regulating erection of buildings.

2. For authorizing the city architect, or other officer, appointed for that purpose to permit in special cases, which in his judgment warrant it, such deviation from the by-laws regulating the erection of buildings as he may deem proper.

Speedways.

Setting apart streets for fast driving.

3. For setting apart one or more highways on which horses may be ridden or driven more rapidly than is permitted upon other

highways, and for regulating the use for such purpose of any such highway.

(*a*) If a majority of the property owners on any such street petition against such by-law it shall be repealed.

University of Toronto.

4. For granting aid to the University of Toronto.

Unslaughtered Cattle.

Seizure of cattle, etc., unfit for food.

5. For authorizing the seizing, in order to prevent their use as food, of unslaughtered cattle, sheep, calves and hogs which have died within the municipality, and for disposing of the carcasses so as not to endanger the public health, and so as to secure to the owner such value as remains over and above the expenses incurred in disposing of them. 3-4 Geo. V. c. 43, s. 410.

411. BY-LAWS MAY BE PASSED BY THE COUNCILS OF TOWNSHIPS.

Fires—Prevention of.

Prevention of fires.

1. Within defined areas, where the number of the inhabitants or the proximity of buildings in any part of the township renders it expedient to do so, for exercising the powers conferred on the councils of urban municipalities by paragraphs 16 to 35 of section 400. 3-4 Geo. V. c. 43, s. 411, par. 1.

Garbage, Ashes, etc.—Removal of.

Removal of ashes, garbage, etc., by townships.

1*a*. For exercising the powers conferred on cities and towns by paragraph 6 of section 406, with reference to the collection, removal and disposal by the corporation of ashes, garbage and other refuse. 7 Geo. V. c. 42, s. 19.

Portable Steam Engines.

Portable steam engines.

2. For prescribing the distance from a highway within which unenclosed portable steam engines may not be used for running a saw-mill or a shingle mill.

Sleighing—Keeping Open Highways During Season of.

3. For providing for keeping open the highways during the season of sleighing in each year; and for the application of so much of the commutation of the Statute Labour Fund, as may be necessary for that purpose. Keeping roads open in winter.

4. For requiring the overseers of highways or the pathmasters to make and keep open the highways during the season of sleighing. Requiring overseers of highways to keep open highways.

(*a*) Such overseers and pathmasters may require the persons liable to perform statute labour to assist in keeping open such highways, and shall give to any person so employed a certificate of his having performed statute labour and of the number of days' work done, for which he shall be allowed on his next season's statute labour. Powers.

Streams, Creeks and Watercourses—Prohibiting Obstruction of.

5. For prohibiting the obstruction of streams, creeks and watercourses, by trees, brushwood, timber or other materials, and for requiring the clearing away and removing of the obstructions by the person causing the same. Prohibiting obstruction of streams, etc.

Weighing Machines.

6. For erecting and maintaining weighing machines within the municipality or within an adjacent village, and charging fees for the use thereof, not being contrary to the limitations prescribed by subsection 8 of section 402. Erecting and maintaining weighing machines.

Wet Lands.

7. For purchasing any wet land in the township, the price of which, in case of Crown lands, shall be fixed by the Lieutenant-Governor in Council, and for draining such land. 3-4 Geo. V. c. 43, s. 411, pars. 2-7. Purchase of wet lands from Government, etc.

Naming Streets and Numbering Houses.

8. In the case of townships bordering on cities having a population of not less than 50,000 for naming (and changing the names Naming streets, etc.

of) and surveying streets and for numbering houses and lots under and in conformity with paragraphs 38 and 39 of section 400. 3-4 Geo. V. c. 43, s. 411, par. 8; 4 Geo. V. c. 33, s. 15.

The words in brackets were inserted by 4 Geo. V. c. 33, s. 15.

411*a*. BY-LAWS MAY BE PASSED BY THE COUNCILS OF VILLAGES.

Residential streets and building line.

1. For exercising the powers conferred on cities and towns by paragraph 10 of section 406 with reference to residential streets and building line. 5 Geo. V. c. 34, s. 29.

Removal of ashes and garbage.

2. For exercising the powers conferred on cities and towns by paragraphs 5 and 6 of section 406. 6 Geo. V. c. 39, s. 9.

412. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES, SEPARATED TOWNS AND TOWNS IN UNORGANIZED TERRITORY AND OF CITIES HAVING A POPULATION OF LESS THAN 100,000 AND BY THE BOARD OF COMMISSIONERS OF POLICE OF CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Auctioneers.

Licensing, etc., auctioneers.

1. For licensing, regulating and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction, and for prohibiting the granting of a license to an applicant who is not of good character, or whose premises are not suitable for the business of auctioneer or are upon a residential or other highway in which it is deemed not desirable that the business should be carried on; for ascertaining by such means as the by-law may provide whether an applicant is not of good character or his premises are not suitable for the business; for determining the time the license shall be in force;

(*a*) No such by-law shall apply to a sheriff or bailiff offering for sale goods or chattels seized under an execution or distrained for rent. 3-4 Geo. V. c. 43, s. 412, par. 1.

A by-law which fixes one fee for an auctioneer's license in the case of residents and a higher fee in other cases is invalid: Rex v. Pope (1906), 7 Terr. L.R. 314, 4 W.L.R. 278.

See also notes under s. 249 (1) (by-laws which discriminate), and notes under s. 416 (1) (regulating).

Par. 2 was repealed by 5 *Geo. V. c.* 34, *s.* 30. *See new sec.* 412*a*.

"Regulating." See notes to s. 416 (1).

412*a*. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES AND TOWNS, AND OF CITIES HAVING A POPULATION OF LESS THAN 100,000 AND BY BOARDS OF COMMISSIONERS OF POLICE OF CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Bill Posters.

1. For licensing, regulating and governing bill posters, advertising sign painters, bulletin board painters, sign posters and bill distributors, and for prohibiting the posting up or distributing of posters, pictures or hand bills which are indecent or tend to corrupt morals.

Licensing, regulating and governing bill posters, sign painters, etc.

(*a*) A by-law of a county passed under this paragraph shall not have force in a town which has passed a by-law for a similar purpose. 5 Geo. V. c. 34, s. 31.

"Regulating." See notes to s. 416 (1).

413. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES, SEPARATED TOWNS AND TOWNS IN UNORGANIZED TERRITORY AND BY BOARDS OF COMMISSIONERS OF POLICE OF CITIES.

Junk and Second-hand Shops, etc.

1. For licensing, regulating and governing junk shops, and second-hand shops and dealers in second-hand goods, and for revoking and cancelling the license of any person convicted of

Licensing and regulating junk shops, etc.

R.S.C. c. 146.

a second offence against the by-law or of an offence against sections 399 to 401 of *The Criminal Code.*

(*a*) "Dealers in second-hand goods" shall include persons who go from house to house or along highways for the purpose of collecting, purchasing or obtaining second-hand goods.

(*b*) "Second-hand goods" shall include bottles, bicycles, waste paper, rags, bones, old iron or other scrap or junk.

(*c*) The fee to be paid for the license shall not exceed $20 for one year. 3-4 Geo. V. c. 43, s. 413.

Statutory power to "license and regulate second-hand stores and junk stores" does not authorize a by-law to the effect that "no keeper of a second-hand store shall receive, purchase or exchange any goods, articles or things from any person who appears to be under the age of eighteen years." Such a by-law is bad, as partial and unequal in its operation as between different classes and involving oppressive or gratuitous interference with the rights of those subject to it without reasonable justification: Reg. v. Levy (1899), 30 O.R. 403; but see s. 421, par. 2.

414. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES, SEPARATED TOWNS AND TOWNS IN UNORGANIZED TERRITORY.

Public Fairs.

Public fairs for sale of cattle, etc.

1. For authorizing, on petition of at least fifty electors, the holding at one or more of the most public and convenient places in the municipality public fairs restricted to the sale, barter and exchange of cattle, horses, sheep, pigs and articles of agricultural production or requirement.

Rules for governing same.

Notice of passing of by-law.

(*a*) The by-law shall prescribe rules and regulations for the government of the fairs, and appoint a person to see that they are carried out, and shall also fix the fees to be paid to him by persons attending the fair, and public notice of the passing of the by-law shall be forthwith given by the council.

Surgeons.

Appointing gaol surgeons.

2. For appointing one or more surgeons of the gaol and other institutions under the control of the corporation. 3-4 Geo. V. c. 43, s. 414.

415. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES, CITIES, SEPARATED TOWNS AND TOWNS IN UNORGANIZED TERRITORY.

Tanneries.

Defining areas in which certain trades may not be carried on.

1. For defining areas within which tanneries, rag, bone, or junk shops, or industries of a noxious or unhealthy character, may not be carried on.

(*a*) This paragraph shall not apply to a tannery erected before the 7th day of April, 1890. 3-4 Geo. V. c. 43, s. 415.

416. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES AND TOWNS, AND OF CITIES HAVING A POPULATION OF LESS THAN 100,000, AND BY THE BOARD OF COMMISSIONERS OF POLICE OF CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Hawkers and Pedlars.

Licensing, etc., hawkers, petty chapmen.

1. For licensing, regulating and governing hawkers, pedlars and petty chapmen, and other persons carrying on petty trades, or who go from place to place or to other men's houses, on foot, or with any animal, vehicle, boat, vessel, or other craft, bearing or drawing goods, wares, or merchandise for sale, or otherwise carrying goods, wares or merchandise for sale (or who go from place to place or to other men's houses to take orders for coal oil or other oil which is to be delivered afterwards from a tank car moved on a railway line or who go from place to place or to a particular place to make sales or deliveries of coal oil or other oil from such tank car).

When license not required.

(*a*) No such license shall be required for hawking, peddling or selling goods, wares or merchandise to a retail dealer, or for hawking, peddling or selling goods, wares or merchandise, the growth, produce or manufacture of Ontario, not being liquors within the meaning of *The Liquor License Act*, if the same are hawked or peddled by the manufacturer or producer of them, or by his *bona fide* servants or employees having written authority to do so;

Rev. Stat. c. 215.

"Regulating."—A power to make by-laws for the regulation of trade may be given by statute. Such a power, however, does not confer or imply a power to prohibit or prevent trade; for the latter power can only be conferred by express words. By-laws which cramp and harass trade are void: Halsbury's Laws of England, vol. 8, par. 763, and cases there cited.

Power to "regulate," in the absence of an express power of prohibition, does not authorize the making it unlawful to carry on a lawful trade in a lawful manner, and, therefore, a by-law which prohibits hawkers from plying their trade in an important part of a municipality, no question of apprehended nuisance having been raised, is invalid: Toronto v. Virgo, L.R. (1896), A. C. 88, 12 T.L.R. 46.

A statutory power to pass by-laws regulating a trade does not authorize the prohibition of the trade or the making it unlawful to carry on a lawful trade in a lawful manner: Rex v. Sung Chong (1909), 14 B.C.R. 275, 11 W.L.R. 231 (peddling before 10 a.m. on a market day). See also Reg. v. Jim Sing (1895), 4 B.C.R. 338; notes to s. 417, pars. 4, 5; Bollander v. Ottawa (1898), 30 O.R. 7, (1900) 27 A.R. 335; and In re Blomberg and Nelson (1910), 15 W.L.R. 375 (B.C.).

Hawker is defined to be "an itinerant trader, who goes about from place to place, carrying with him and selling wares," "one who sells his wares by proclaiming them on the street."

Pedlar, "a hawker in small wares," "one who travels the country with small commodities": per Rose, J., in Reg. v. Coutts (1884), 5 O.R. 644, 649.

A person who, besides keeping a shop, goes about from house to house with a sewing machine, soliciting orders to be afterwards filled, is not guilty of hawking and peddling: Reg. v. Phillips (1898), 35 N.B. 393, 7 Can. Cr. Cas. 131.

Delivering judgment, Tuck, C.J., said: "My own idea of a 'hawker' has always been that of a man who goes through the streets or roads of the city or country calling out his wares for sale. A pedlar, in the olden times, was one who went through the country with a pack on his back, peddling his small wares from door to door and from farm house to farm house."

A by-law passed under the authority of this paragraph is invalid if it does not contain the exception mentioned in this clause: Reg. v. Smith (1899), 31 O.R. 224.

A person in the employment of a trade corporation, having a place of business and paying the usual business and other taxes, who sells by wholesale to retail dealers and not to consumers, is not a pedlar. The calling of a pedlar carried with it the idea of petty trade or of sale by outcry or itinerancy: Montreal v. Emond (1903), Q.R. 23 S.C. 77.

One selling goods from a sample to be afterwards delivered is not a hawker: Rex v. Wolfe (1906), 4 W.L.R. 553 (Sask.).

It was held by a police magistrate, in Rex v. Prosterman (1909), 11 W.L.R. 141 (Sask.), that the words, "goods, wares and merchandise," do not include fish, citing Co. Litt. 118.

(*b*) Such servant or employee shall exhibit his authority when required so to do by any municipal or peace officer; **Production of authority of servant.**

(*c*) In a prosecution for a breach of the by-law the onus of proving that he does not for either of the reasons mentioned in clause (*a*) require to be licensed shall be upon the person charged. **Onus of proof that no license required.**

(*d*) Nothing in this paragraph shall affect the powers to pass by-laws, under sections 401 and 402, paragraph 1 of section 419, and paragraphs 6 and 7 of section 420. **Certain powers not affected.**

(*e*) "Hawkers" in this paragraph shall include agents for persons not resident within the county, who sell or offer for sale tea, coffee, spices, baking powder, dry goods, watches, plated ware, silver ware, furniture, carpets, upholstery, millinery (coal oil, tinware, carpet sweepers and electrical appliances), or jewellery, spectacles or eyeglasses, or who carry and expose samples or patterns of any such article, which is to be afterwards delivered within the county to a person not being a wholesale or retail dealer in such article. **"Hawkers," meaning of.**

"Dry goods."—The term "dry goods" does not include clothing ordered to be manufactured from cloths, samples of which are exposed, with a view to soliciting orders: Reg. v. Bassett (1886), 12 O.R. 51.

"Agents."—A member of a firm, carrying and exposing samples, or making sales himself, is not "an agent" within the meaning of this paragraph: Reg. v. Marshall (1886), 12 O.R. 55.

"Hawkers."—The definition of "hawkers" in this paragraph is not intended to be exhaustive. Though the defendant made only one sale, he went from place to place, with horses and conveyances, drawing ranges for sale, and that was forbidden by the statute: Rex v. Van Norman (1909), 19 O.L.R. 447, 14 O.W.R. 659.

"Carpet Sweepers."—It had been held that "carpet sweepers," not being mentioned in the section, were not within it: Wright v. Jarvis (1914), 7 O.W.N. 608.

"Sell."—Where an agent of an oil company obtained from a purchaser orders on the company to ship to the purchaser stated quantities of oil to be delivered at the places named in the orders, cash on delivery, this did not constitute a sale within the meaning of this section: In re Garnham's Conviction (1915), 34 O.L.R. 545, 35 O.L.R. 54, 26 Can. Cr. Cas. 114.

Force of by-law of town not separated.

(*f*) Where the council of a town not separated from a county has passed a by-law under this paragraph a by-law of the county shall not be in force in the town while the by-law of the town remains in force.

Fees.

(*g*) The fee to be paid for the license under by-laws passed under this paragraph may be lower in the case of persons who have resided continuously within the municipality for which the license is sought for at least one year prior to the application therefor than in the case of persons who have not so continuously resided, but in cities having a population of not less than 100,000, the fee shall not be more than $50 for a motor vehicle or a two-horse waggon, $30 for a one-horse waggon, $15 for a push-cart, $10 for one carrying a pack, and $1 for one carrying a basket.

License to be produced on demand.

(*h*) The licensee shall at all times whilst carrying on his business have his license with him and shall upon demand exhibit it to any municipal or peace officer, and if he fails to do so shall, unless the same is accounted for satisfactorily, incur a penalty of not less than $1 or more than $5.

This penalty is recoverable and may be enforced under the Ontario Summary Convictions Act, R.S.O. c. 90: see s. 498 (1).

Penalty.

(*i*) If a peace officer demands the production of a license by any person to whom the by-law applies and the demand is not complied with, it shall be the duty of the peace officer, and he shall have power to arrest such person without a warrant and to take him before the nearest justice of the peace, there to be dealt with according to law. 3-4 Geo. V. c. 43, s. 416, par. 1; 5 Geo. V. c. 34, ss. 32, 33.

The words in brackets in par. 1 were inserted by 5 Geo. V. c. 34, s. 32, and the words in brackets in clause (*e*) were inserted by 5 Geo. V. c. 34, s. 33.

A sale of eleven hundred business cards is a sale by wholesale and not a sale by retail within the meaning of The Municipal Act, 1891, 54 Vict. c. 29, s. 166 (B.C.): Health v. Victoria (1892), 2 B.C.R. 276.

A person who, without a license, solicits orders as a restorer or mender of unbrellas does not contravene a by-law which provides that every umbrella mender must be licensed: Cardoni v. Robitaille (1904), Q.R. 25 S.C. 444.

A colporteur of the British and Foreign Bible Society, who sells bibles, cannot be said to be trading within the meaning of The Municipal Clauses Act (B.C.). The selling is a minor incident to the main object of the society, which is to distribute the bibles among the people: Duncan v. Gairns (1916), 10 W.W.R. 789 (B.C.).

A wholesale merchant, whose commercial traveller takes orders in a neighbouring municipality for the purchase of goods and delivers the goods there on the next day to the purchasers, does not carry on business in that municipality: Giffard v. Dupuis (1916), Q.R. 50 S.C. 257, in which the principle of the decisions in Magann v. Auger (1901), 31 S.C.R. 186 [reversing a decision of the Court of Queen's Bench, appeal side, which had affirmed the judgment of the Superior Court (1899), Q.R. 16 S.C. 22], and Bigelow v. Craigellachie-Glenlivet Distillery Company (1905), 37 S.C.R. 55, affirming (1905) 37 N.S. 482, was applied.

It was held in Rex v. Hamilton (1913), 5 O.W.N. 58, 265, 13 D.L.R. 898, 15 D.L.R. 150, 25 O.W.R. 33, 22 Can. Cr. Cas. 57, where the place at which what is alleged to have been an infraction of the section took place was on the boundary line between the counties of Huron and Perth, that the offence was not committed within the county of Huron, the by-law of which was invoked.

This case has since been provided for by s. 416*a*.

Supplying licenses.

2. For providing the treasurer or clerk of the county, or the clerk of any municipality within the county with licenses under by-laws passed under paragraph 1 of section 412 and paragraph 1 of this section, to be issued under such regulations as may be prescribed to persons applying for them.

Prohibiting sale of fruit, etc., on public streets, etc.

3. For prohibiting the sale of fruit, candy, peanuts, ice cream or ice cream cones from a basket, or a waggon, cart or other vehicle upon any highway or part of it, or in any public park or other public place.

Proviso.

(*a*) The by-law shall not apply to a farmer, market gardener or other person selling or delivering goods at any place of business or residence upon such highway or part thereof. 3-4 Geo. V. c. 43, s. 416, pars. 2, 3.

Licensing, etc., dry cleaners, pressers, etc.

4. For licensing, regulating and governing the businesses of dry cleaners, pressers and persons engaged in those and similar businesses in which gasoline or benzine is used. 4 Geo. V. c. 33, s. 16.

County by-law to apply to sales on county boundary line.

416*a*. A by-law passed by a council of a county under the provisions of section 416 shall whether the same is mentioned or not cover and include the boundary line or highway between such county and an adjoining county, and a sale made on said boundary line or highway to a resident of a county in which such by-law is in force shall be and constitute a breach of such by-law in the same manner and with like consequence and effect as if made wholly within the said county. 4 Geo. V. c. 33, s. 17.

See Rex v. Hamilton (1913), 5 O.W.N. 58, 265, 13 D.L.R. 898, 15 D.L.R. 150, 25 O.W.R. 33, 22 Can. Cr. Cas. 57, noted under s. 416.

417. BY-LAWS MAY BE PASSED BY THE COUNCILS OF COUNTIES, TOWNS, VILLAGES AND TOWNSHIPS AND OF CITIES HAVING A POPULATION OF LESS THAN 100,000, AND BY THE BOARDS OF COMMISSIONERS OF POLICE OF CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Intelligence Offices.

Licensing intelligence offices.

1. For licensing and governing suitable persons to keep intelligence offices; for registering the names and residences of servants, workmen, clerks and other persons seeking employment; for procuring employment for them and giving information to them and to persons in want of them, and for fixing the fees to be charged by the keepers of such offices, and the duration of the license.

Regulation.

2. For regulating such intelligence offices;

Revocation of license.

3. For revoking any such license.

Fee.

(*a*) The license fee shall not exceed $10 for one year.

Victualling Houses, etc.

Limiting number of and licensing victualling houses, etc. Rev. Stat. c. 215.

4. For limiting the number of and licensing and regulating victualling houses, ordinaries, and houses where fruit, fish, oysters, clams or victuals are sold to be eaten therein, and places not being a tavern or shop licensed under *The Liquor License Act* for the lodging, reception, refreshment or entertainment of the public.

Revocation of license.

5. For revoking the license.

Fees.

(*a*) The sum to be paid for the license shall not exceed $20. 3-4 Geo. V. c. 43, s. 417.

"Regulating."—See notes to s. 416 (1).

A municipal by-law which provided that no eating house within the municipality should be open nor anything sold therein between 1 a.m. and 7 a.m. and also that on Sunday no such eating house should be open nor anything sold therein after 7 p.m., was held to be a good and valid by-law as regulating eating houses within the authority of this section: In re Campbell and Stratford (1907), 14 O.L.R. 184, 9 O.W.R. 115, 345. This case was followed in In re Karry and Chatham (1909), 20 O.L.R. 178, (1910) 21 O.L.R. 566.

See also In re Fisher and Carman (1905), 16 Man. L.R. 560, 562; Hodge v. Regina (1883), 9 A.C. 117; In re Baker and Paris (1853), 10 U.C.R. 621; In re Greystock and Otonabee (1855), 12 U.C.R. 458.

A by-law which requires lodging-house keepers to take out a license, but does not define what is meant by keeping a lodging-house, does not apply to a person not engaged in that occupation for profit: In re Gun Long (1900), 7 B.C.R. 457.

418. BY-LAWS MAY BE PASSED BY THE COUNCILS OF TOWNS AND CITIES HAVING A POPULATION OF LESS THAN 100,000, AND BY BOARDS OF COMMISSIONERS OF POLICE OF CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Electrical Workers.

Electrical workers.

1. For examining, licensing and regulating electrical workers. 3-4 Geo. V. c. 43, s. 418.

"Regulating."—See notes to s. 416 (1).

419. BY-LAWS MAY BE PASSED BY THE COUNCILS OF TOWNS AND VILLAGES AND OF CITIES HAVING A POPULATION OF LESS THAN 100,000, AND BY THE BOARDS OF COMMISSIONERS OF POLICE OF CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Sale of Meat.

Regulating sale of meat.

1. For granting annually, or oftener, licenses for the sale of fresh meat in quantities less than by the quarter carcass, and fixing and regulating the places where such sale shall be allowed, and for prohibiting the sale of fresh meat in less quantity than the quarter carcass, unless by a licensed person and in a place authorized by the council;

Proviso.

(*a*) The power conferred by paragraph 1 shall not be affected or restricted by anything in section 402.

(*b*) Nothing in paragraph 1 shall affect the powers conferred by paragraphs 3 and 4 of section 401.

(*c*) The fee to be paid for the license shall not exceed $50 in a city and $25 in a town or village.

Tobacconists.

2. For licensing, regulating and governing keepers of stores and shops other than taverns and shops licensed under *The Liquor License Act* where tobacco, cigars or cigarettes are sold by retail and for revoking any license granted. 3-4 Geo. V. c. 43, s. 419.

Licensing and regulating keepers of tobacco stores. Rev. Stat. c. 215.

"Regulating."—See notes to s. 416 (1).

See In re Talbot and Peterborough (1906), 12 O.L.R. 358, referred to in notes to s. 254.

420. BY-LAWS MAY BE PASSED BY THE COUNCILS OF TOWNS, TOWNSHIPS, VILLAGES AND CITIES HAVING A POPULATION OF LESS THAN 100,000, AND BY BOARDS OF COMMISSIONERS OF POLICE IN CITIES HAVING A POPULATION OF NOT LESS THAN 100,000.

Bagatelle and Billiard Tables.

1. For licensing, regulating and governing persons who for hire or gain, and proprietary clubs which directly or indirectly keep, or have in their possession, or on their premises any billiard, pool or bagatelle table, or keep or have any such table, whether used or not, in a house or place of public entertainment or resort; for limiting the number of licenses to be granted and the number of such tables which shall be licensed and for revoking any license granted. 3-4 Geo. V. c. 43, s. 420, par. 1, *part.*

Billiard, pool and bagatelle tables.

(*a*) "Proprietary club" shall mean and include all clubs other than those in which the use of any such table is only incidental to the main objects of the club.

(*b*) The License Commissioners having jurisdiction in the license district may when authorized by order of the Lieutenant-Governor in Council determine whether any club in such district is within the provisions of the clause (*a*) and any certificate given by the commissioners in respect thereto shall be final and conclusive. 5 Geo. V. c. 34, s. 35.

"Regulating."—See notes to s. 416 (1).

"Proprietary Club."—A club was incorporated by letters patent to encourage and promote billiard playing and other athletic and amateur sports. . . . The members were all shareholders in the capital stock of the club, and no person could be a member unless be subscribed for and became the holder of one or more shares, and no persons other than members were permitted to have the use of the club premises. Premises were leased by the club, on which there were bowling alleys and billiard tables, and fees, which went into the funds of the club and were used for carrying it on, were paid by the members for playing on them. By resolution the directors were empowered to apply these fees in payment of the shares subscribed.

It was held that the club was not a proprietary club as defined by this paragraph, and that the tables and alleys were not kept or in possession for hire or gain, directly or indirectly, and that the place where they were kept was not a house of public entertainment or resort within the meaning of the paragraph.

Rex v. Dominion Bowling and Athletic Club (1909), 19 O.L.R. 107, 14 O.W.R. 468, 15 Can. Cr. Cas. 105.

This case was decided before the amendment made by 5 Geo. V. c. 34, s. 35, was enacted.

See also notes to s. 253 as to license fees being so large as to be in their nature prohibitive.

A council has the right to revoke a pool-room license for an infraction by the licensee of a by-law where the by-law existed at the time of the application for the license and the infraction was expressly made ground for revocation at the time of the application: In re Crabbe and Swan River (1913), 23 Man. L.R. 14, 9 D.L.R. 405, 49 C.L.J. 271, 22 W.L.R. 860, 23 W.L.R. 372, 3 W.W.R. 1047.

See also annotations to the report of this case in 9 D.L.R.

Dogs.

Prohibiting running at large of dogs.

2. For prohibiting or regulating the running at large of dogs; for seizing and impounding and for killing, whether before or after impounding, dogs running at large contrary to the by-law; and for selling dogs so impounded at such time and in such manner as may be provided by the by-law.

(*a*) For the purposes of this paragraph, a dog shall be deemed to be running at large when found in a highway or other public place and not under the control of any person. 3-4 Geo. V. c. 43, s. 420, par. 2.

A by-law of a township council which provided that: "It shall not be lawful for any dog to run at large unaccompanied by its owner or by some member of such owner's family, and any dog . . . found so running at large at a greater distance than one-half mile from the premises of its owner and unaccompanied therewith may be killed by any resident ratepayer of this municipality," was held to be authorized by this section: McNair v. Collins (1912), 27 O.L.R. 44, 6 D.L.R. 510, 22 O.W.R. 891.

Exhibitions, Places of Amusement, etc.

Exhibitions, bowling alleys, etc.

3. For regulating and licensing (subject to the provisions of *The Theatres and Cinematographs Act*), exhibitions held for hire or gain, theatres, music halls, bowling alleys, moving picture shows and other places of amusement, and for prohibiting the location of them, or a particular class of them, on land abutting on any highway or part of a highway to be named in the by-law and for revoking any license granted. 3-4 Geo. V. c. 43, s. 420, par. 3; 6 Geo. V. c. 24, s. 27 (2).

The words in brackets were inserted by 6 Geo. V. c. 24, s. 27 (2).

The anticipated use of a building as a music hall or other place of amusement, in contravention of a by-law, is not a ground for the granting of an injunction to restrain the issue of a permit for the erection of the building. A ratepayer and an adjoining landowner has no *locus standi* to maintain an action for that purpose: MacKenzie v. Toronto (1915), 7 O.W.N. 820, citing Tompkins v. Brockville (1899), 31 O.R. 124, and Mullis v. Hubbard, L.R. (1903) 2 Ch. 431.

A municipal council may not issue a license for an exhibition of wild animals where there is an existing by-law prohibiting the keeping of wild animals within the municipality: Saanich v. French (1912), 8 D.L.R. 637, 3 W.W.R. 270 (British Columbia).

Plumbers.

Plumbers.

4. For licensing, regulating and governing plumbers, master plumbers and journeymen plumbers;

"Master plumber."

(*a*) For the purposes of this paragraph "master plumber" shall mean a person who is skilled in the planning, superintending and installation of plumbing, is familiar with the laws, rules and regulations governing the same, has a regular place of business in the municipality and who himself or by journeymen plumbers in his employ performs plumbing work.

(*b*) A "journeyman plumber" shall mean a person other than a master plumber who has been in the employ of a master plumber for not less than one year and desires to follow plumbing as his calling. 7 Geo. V. c. 42, s. 20.

Shows.

Exhibitions of wax work, shows, etc.

5. For prohibiting or regulating and licensing exhibitions of wax work, menageries, circus-riding and other like shows usually exhibited by showmen, and for regulating and licensing roller skating rinks and other places of like amusement, and merry-go-rounds, switchback railways, carousals, and other like contrivances; and for imposing penalties not exceeding the amount of the license fee on offenders against the by-law; and for levying the same by distress and sale of the goods and chattels of the showman or proprietor, or belonging to or used in such exhibition or show whether owned or not owned by such showman or proprietor.

Licenses not to be granted for certain times and places.

(*a*) A license shall not be granted for any such exhibition or show to be held on the days of the exhibition of any district or township agricultural society, within 300 yards from the grounds of the society or for any such exhibition or show in or in connection with which gambling is carried on or goods, wares or merchandise are sold or trafficked in.

Fees.

(*b*) The fee to be paid for the license shall not exceed $500.

Transient Traders.

Licensing and regulating transient traders.

6. For licensing, regulating and governing transient traders and other persons whose names have not been entered on the assessment roll in respect of income or business assessment for the then current year; and who offer goods, wares or merchandise for sale

by auction, conducted by themselves or by a licensed auctioneer or otherwise, or who offer them for sale in any other manner. 3-4 Geo. V. c. 43, s. 420, pars. 5-6.

"Regulating."—See notes to s. 416 (1).

"Transient traders."—The words "transient trader" may include a butcher or dealer in meat: Rex v. Meyers (1903), 6 O.L.R. 120.

"Other persons."—"Other persons" means other trading persons, and does not include a farmer selling his own produce from a railway car, by which it had been transported to the town: Rex v. Geddes (1915), 35 O.L.R. 177, 28 D.L.R. 378.

The words, "who occupy premises," in the corresponding provision of the former Municipal Acts are now omitted, and the decisions in Reg. v. Caton (1888), 16 O.R. 11, and Reg. v. Appelbe (1899), 30 O.R. 623, are no longer applicable.

In Rex v. Preston (1910), 1 O.W.N. 983, it was held that, in the absence of evidence that the person charged occupied the premises for a temporary period only, he cannot be convicted of an infraction of a by-law passed under this section.

In this case the fact that the provision as to occupying premises for temporary period was struck out of pars. 30 and 31 of s. 583 by 6 Edw. VII. c. 34, ss. 29, 30, does not appear to have been called to the attention of the Court.

This enactment does not authorize the passing of a by-law in respect to a person living at an hotel and taking orders there for clothing to be made in a place outside the municipality out of material corresponding with samples exhibited: Rex v. St. Pierre (1902), 4 O.L.R. 76.

That case was followed in Rex v. Pember (1912), 3 O.W.N. 957, 1216, 2 D.L.R. 542, 3 D.L.R. 347, 21 O.W.R. 915, 20 Can. Cr. Cas. 60.

One sale is not sufficient: Rex v. Ogle (1910), 15 W.L.R. 325 (B.C.).

Where goods are consigned by the owner to be sold on commission, and are sold by the consignee by auction in premises rented by him, the owner is not an occupant of the premises or a transient trader within the meaning of The Municipal Clauses Act, R.S.B.C. 1897, c. 144, s. 171 (23), as amended by the Statutes of 1898, B.C., c. 35, s. 19: Reg. v. Wilson (1900), 7 B.C.R. 112.

The defendant arranged with retail merchants that each of them should receive from him trading stamps, the property in which was to remain in the defendant, and should pay him fifty cents per hundred stamps, and give one of them to each customer for every ten cents of cash purchases; that the defendant should advertise the merchants in certain directories and otherwise; that every customer who brought to the defendant one of the directories with a fixed number of stamps pasted in a blank space left for that purpose was to be entitled to receive in exchange any article he might select out of an assortment of goods kept in stock by the defendant; and, apart from this, the goods were not for sale. It was held that these transactions did not constitute selling or offering for sale by the defendant within the meaning of a municipal by-law passed under a section of R.S.O. (1897), c. 223, which in that respect corresponds with this paragraph: Reg. v. Langley (1899), 31 O.R. 295.

See s. 400, par. 48, and Wilder v. Montreal (1905), Q.R. 14 Q.B. 139, and notes to that case under s. 8 (constitutionality).

A municipal corporation has the right to impose on traders carrying on business within the municipality the obligation of taking out licenses for their business, but cannot impose this obligation only on persons who carry on a particular kind of business to the exclusion of others: St. Ambroise v. Godin (1898), 5 Rev. de Jur. 321 (Que.).

Requirement as to obtaining license before doing business.

7. For requiring transient traders and other persons whose names are not entered on the assessment roll or are entered on it for the first time, in respect of income or business assessment, and who so offer goods, wares or merchandise for sale, to pay a license fee before commencing to trade.

Stock of insolvent.

(*a*) A by-law passed under paragraphs 6 or 7 shall not apply to the sale of the stock of an insolvent which is being sold or disposed of within the county or district in which he carried on business therewith at the time of the issue of an attachment or of the execution of an assignment.

In the absence of evidence that an agent of a company has not obtained a license or is not entered upon the assessment roll in such a manner as to exempt him from the provisions of par. 7, he cannot be convicted of an offence under it, although the company may not be entered upon the assessment roll or have a license: In re Lang (1914), 6 O.W.N. 629.

Meaning of words "transient traders."

(*b*) "Transient traders" shall include any person commencing business who has not resided continuously in the municipality for at least three months next preceding the time of his commencing such business there.

Fees.

(*c*) The fee to be paid for a license under paragraph 7 shall not exceed in a city or town $250, in a village in unorganized territory $200, and in other local municipalities $100.

In Rex v. Laforge (1906), 12 O.L.R. 308, the defendant, being convicted of an infraction of this section, objected that the by-law, though professedly for licensing and regulating, was, in reality, passed at the instance of the retail merchants of the town, who had the license fees made so high as to be in fact prohibitive. It was held that, as the Court was not trying the defendant or hearing an appeal from the conviction and this not being a motion to quash the by-law, the finding of the magistrate "that the license fee is not prohibitory in its nature," based upon a consideration of the evidence, could not be impeached.

Where the by-law provides for a larger license fee than is authorized, it is bad: In re Borror's Conviction (1915), 8 O.W.N. 601, 28 D.L.R. 377.

(*d*) The sum paid for a license shall be credited to the person paying it, on account of taxes thereafter payable by him. 3-4 Geo. V. c. 43, s. 420, par. 7; 5 Geo. V. c. 34, s. 34.

The amendment made by 5 Geo. V. c. 34, s. 34, was the correction of a clerical error in clause (c), where the reference was to par. 8, instead of par. 7.

421. By-laws may be Passed by the Councils of Towns and Villages and Boards of Commissioners of Police in Cities.

Bands and Musical Instruments.

Bands of music.

1. For regulating or prohibiting the playing of bands and of musical instruments in any highway, park, or public place except by a military band attached to any regular corps of the Militia of Canada when on duty, under the command of its regular officer.

Junk Stores—Purchasing or Receiving Pledges from Minors.

Junk shops, buying from minors.

2. For prohibiting keepers of second-hand shops or junk stores or shops, directly or indirectly purchasing from, exchanging with, or receiving in pledge from any minor appearing to be under the age of 18 years, without written authority from a parent or guardian of such minor, any metals, goods, or articles. 3-4 Geo. V. c. 43, s. 421.

"Regulating."—See notes to s. 416 (1).

See Reg. v. Levy (1899), 30 O.R. 406, noted under s. 413 (1), which was decided before this paragraph was enacted.

422. BY-LAWS MAY BE PASSED BY BOARDS OF COMMISSIONERS OF POLICE OF CITIES.

Cab Drivers—Licensing of.

Licensing cab drivers.

1. For licensing drivers of cabs.

Children in Certain Occupations.

Control of children.

2. For regulating and controlling children engaged as express or despatch messengers, vendors of newspapers and small wares and bootblacks.

Fares for Conveyance of Goods and Passengers.

Rates of fare for conveyance of goods or passengers.

3. For establishing the rates of fare to be taken by the owners or drivers of vehicles for the conveyance of goods or passengers, either wholly within the city, or from any point within the city to any other point not more than three miles beyond its limits, and providing for enforcing payment of such fares.

Livery Stables, etc.—Hours of Labour.

Regulating hours of labour of persons employed in livery stables, etc.

4. For regulating the hours of labour of persons employed in livery or boarding stables as drivers of motor vehicles, cabs, carriages, or sleighs kept for hire, or by the owners of horses, carts, trucks, omnibuses, and other vehicles kept for hire.

Livery Stables, etc.—Licensing of.

Licensing and regulating livery stables, cabs, etc.

5. For licensing and regulating the owners of livery stables and of horses, cabs, carriages, carts, trucks, sleighs, omnibuses, and other vehicles regularly used for hire within the city, whether such owners reside within or without the city.

A by-law of a Board of Police Commissioners of a city requiring persons and companies engaged in the business of letters to hire of automobiles, motor cars and carriages and vehicles of all kinds and their drivers to take out licenses and imposing a fee of five dollars ($5) and one dollar ($1) respectively, for the license is valid: per Lennox, J., In re Major Hill Taxicab and Transfer Company and Ottawa (1915), 33 O.L.R. 243, 21 D.L.R. 495.

An injunction to restrain a municipal corporation from proceeding with prosecutions for operating motor cars and trucks for hire without a license, in contravention of a by-law of the Board of Police Commissioners, the validity of which it was desired to call in question, will not be granted: Major Hill Taxicab and Transfer Company v. Ottawa (1915), 8 O.W.N. 446.

Parades and Traffic on Highways.

Regulating traffic and parades.

6. For regulating parades or processions on highways, and from time to time, and as occasion may require, prescribing the routes of travel to be observed by all vehicles, horses and persons upon the highways, and preventing the obstruction of the highways during public processions or public demonstrations, and for giving directions to the police constables for keeping order and preventing any collision or obstruction of traffic at the intersections or other frequented portions of the highways, on all occasions when the highways are thronged, or liable to obstruction.

(*a*) This paragraph shall not affect the right, if any, of a street railway company to regulate the routes of its cars and no regulation or direction which may affect a street railway company shall be made or given until the company has been afforded an opportunity of being heard. 3-4 Geo. V. c. 43, s. 422.

"Regulating."—See notes to s. 416 (1).

See also 7 Geo. V. c. 48, s. 3.

Destitute Insane Persons—Support of.

County council to make provision for the destitute insane.

423. The council of every county shall make provision for the whole or partial support within the county of such insane destitute persons as cannot be admitted to a Provincial Asylum, and shall determine the sums to be paid for such support, and the persons to whom the same shall be paid. 3-4 Geo. V. c. 43, s. 423.

Members of the Council—Payment of.

Remuneration to councillors

424. By-laws may be passed by the councils of counties and townships for paying the members of the council for their attend-

and committeemen.

ance at meetings of the council or of its committees, at a rate not exceeding $5 a day, and five cents for each mile necessarily travelled in going to and from such meetings. 3-4 Geo. V. c. 43, s. 424.

See note to s. 425*a*.

Before the enactment of this section, it was held that municipal councillors were not officers of the corporation within the meaning of an enactment which authorized the settling of the remuneration of township officers: In re Wright and Cornwall (1852), 9 U.C.R. 442; In re Daniels and Burford (1853), 10 U.C.R. 478; East Nissouri v. Horseman (1859), 16 U.C.R. 576.

It was not until 1858 (22 Vict. c. 99, s. 262) that provision was made for paying any but county councillors.

Remuneration of aldermen in certain cities.

425. By-laws may be passed by the councils of cities having a population of not less than 100,000, for paying an annual allowance, not exceeding $300 to aldermen, and an additional allowance not exceeding $100 to each chairman of a standing committee and to the chairman of the Court of Revision and the Local Board of Health.

(*a*) The by-law shall provide for the deduction from such allowance of a reasonable sum to be fixed by the council for each day's absence from meetings. 3-4 Geo. V. c. 43, s. 425.

See notes to s. 425*a*.

"Population."—See s. 2, cl. (*m*).

Members of Certain Councils may be Appointed Commissioners.

Payment of aldermen and chairmen of committees.

425*a*. By-laws may be passed by the councils of cities having a population of not less than 200,000 with the assent of the municipal electors for paying an annual allowance not exceeding $1,200 to aldermen and an additional allowance not exceeding $100 to each chairman of a standing committee and to the chairman of the Court of Revision and the Local Board of Health. 4 Geo. V. c. 333, s. 18.

"Population."—See s. 2, cl. (*m*).

The allowance to members of a council under ss. 424, 425, and 425*a* cannot be attached for payment of their debts: Wickett v. Graham (1903), 2 O.W.R. 402.

Appointment of member of council as road commissioner, etc.

426. A member of the council of a county, village or township may be appointed commissioner, superintendent or overseer of any highway or of any work undertaken wholly or in part at the expense of the corporation and may be paid the like remuneration for his services as if he were not a member of the council. 3-4 Geo. V. c. 43, s. 426.

In New Rockland v. Torrance (1902); Q.R. 21 S.C. 165, it was held that a municipal corporation which had knowingly and voluntarily paid a member of the council for his services as road inspector, which office, under the provisions of the Code (art. 114), he was incapable of filling, was not entitled to repayment of the sum paid, it having been made without any mistake as to fact or law, but with the entire knowledge both as to fact and law.

There does not appear to be a provision similar to art. 114 in the new Municipal Code.

Expenses of Reception of Distinguished Guests and Travelling Expenses.

Expenses of entertaining guests and for travelling on civic business.

427.—(1) The council of a city, town, village, county or township may pay for or towards the reception or entertainment of persons of distinction or the celebration of events or matters of national interest or importance, or for or towards travelling or other expenses incurred in respect to matters pertaining to or affecting the interests of the corporation, a sum not exceeding in any year in the case of

(*a*) a city having a population of not less than 100,000	$20,000
(*b*) a city or town having a population of not less than 20,000	2,500
(*c*) a city or town having a population of not less than 10,000	1,000
(*d*) a county	1,500
(*e*) other municipalities	500

4 Geo. V. c. 33, s. 19.

A municipal corporation cannot, in the absence of statutory authority, expend money for the entertainment of distinguished guests: MacIlreith v. Hart (1908), 39 S.C.R. 657, affirming (1907) 41 N.S. 351, 2 E.L.R. 468, which had reversed (1907) 2 E.L.R. 118, 158; Davis v. Winnipeg (1914), 24 Man. L.R. 478, 17 D.L.R. 406, 28 W.L.R. 93, 634, 6 W.W.R. 703.

"Population."—See s. 2, cl. (*m*).

Publicity Purposes.

Appropriation for diffusing information re advantages of municipality.

428. The council of every city may expend a sum not exceeding in any year $3,000 and the council of every town having a population of not less than 5,000 may expend a sum not exceeding in any year $500, in diffusing information respecting the advantages of the municipality as a manufacturing, business, educational or residential centre, or as a desirable place in which to spend the summer months, and the councils of other municipalities except counties may expend for the like purpose a sum not exceeding in any year $100. 3-4 Geo. V. c. 43, s. 428.

PART XXI.

HIGHWAYS AND BRIDGES.

The law of Quebec with respect to highways and bridges differs so much from the law of Ontario that it is impracticable always to note the cases under the sections, and it has been thought most convenient to deal with them under this general heading.

COUNTY ROADS.

Under art. 755 of the Municipal Code a road between two local municipalities is a county road, and when, under art. 758, the county council has declared a local road to be under the control of one of these municipalities, it has no longer jurisdiction to amend its by-law so as to declare anew that it is a local road, but under the control of the corporations of the two local municipalities jointly, but it has the right to make it a county road, and then, under art. 758, par. 3, it can distribute the work by a special declaration as to the land of the owners in each municipality bound to maintain the road: Nelson v. Megantic (1901), Q.R. 20 S.C. 334, following St. Andre-Avellin v. Ripon (1895), Q.R. 4 Q.B. 167.

The council of a parish is incompetent *ratione materiæ* to cause to be prepared and homologated a *proces-verbal* respecting a road situate between two counties, and the *proces-verbal* is absolutely null: St. Joseph de Chambly v. Arbec (1897), Q.R. 21 S.C. 80.

A road extending over more than one municipality is not a county road, but is merely a local road for each municipality according to the situation of the respective parts: Mondoux v. Yamaska (1902), Q.R. 22 S.C. 148.

Where one side of a road runs along the boundary line between two municipalities, but is wholly situate in one of them, it is a county road under art. 755 (par. 2) of the Municipal Code: Walsh v. St. Anicet (1903), Q.R. 25 S.C. 319.

Where a *proces-verbal* charges the maintenance of a road upon certain ratepayers of a local municipality, and the order homologating it, at the same time, declares the road to be a county road, it is the duty of the county corporation to see to the execution of the *proces-verbal* and to directly levy upon the ratepayers, in the manner provided by art. 941 of the Municipal Code, without reference to or the aid of the corporation of the local municipality in which the road is situate: St. John v. St. Jacques le Mineur (1905), Q.R. 14 K.B. 343.

Opening and Maintaining Roads.

A *proces-verbal* providing for the opening of a road complies with the law if it states where the road will be opened and that ditches and trenches will be provided where necessary, even though it does not mention the particular places where they will be made or anything more than their size: Mondoux v. Yamaska (1902), Q.R. 22 S.C. 148.

A municipal council, applied to for the homologation of a *proces-verbal*, may amend it by adding details the absence of which would have made it a nullity: Mondoux v. Yamaska (supra).

A municipal corporation, when it has authorized the opening of a street, must keep it in good condition, whatever may be its importance or the amount of taxes levied on the adjoining owners, and may be compelled by mandamus to fulfil its obligation: Goulette v. Sherbrooke (1904), Q.R. 25 S.C. 387.

A *proces-verbal* for the opening of a road, made and homologated before 62 Vict. c. 27, remains in force until abrogated by a subsequent *proces-verbal* or by-law, and a municipal council has, therefore, power by resolution to order the performance of the work provided for by a *proces-verbal* which has been allowed to remain in abeyance for over forty years: Ste. Justine de Newton v. Leroux (1906), Q.R. 15 K.B. 159.

A *proces-verbal* can only impose the cost of opening and maintaining a road upon the interested ratepayers, not upon the whole municipality; to do that a by-law is necessary: Gregoire v. Deronee (1907), 4 E.L.R. 74.

A *proces-verbal* for the opening and maintaining of a road is null and void for all or any one of the following omissions or informalities: (1) When the resolution of the council appointing the special superintendent does not prescribe a delay for making it; (2) when the special superintendent has not been sworn before making it; (3) when the special superintendent omits to give notice of the time and place of the public meeting to interested ratepayers; (4) when no notice is given of the time and place at which the council is to make the examination of the *proces-verbal*.

A *proces-verbal* that imposes an obligation on a ratepayer to maintain fences on a third front road, when he already has two such roads to maintain at a distance of less than thirty arpents from that in question, is illegal, unjust and oppressive, and gives him a right of action in the Superior Court to have it quashed.

Meredith v. Onslow (1909), Q.R. 36 S.C. 243.

Only the municipal council which has caused a *proces-verbal* to be prepared and homologated has the power to have an amendment to it prepared and homologated, and, therefore, a county council cannot have made and homologated a *proces-verbal* which modifies or annuls any made and homologated by the board of county delegates of the county and the adjoining county for the construction and maintenance of work situate partly in each.

The board of delegates of two counties can, in the order for homologation of a *proces-verbal,* direct that one portion of the work provided for shall be done by the corporation of the local municipality in which it is situate and be maintained at its expense.

Senecal v. Beauharnois (1909), Q.R. 36 S.C. 337.

A county council has power to have drawn up and homologated a *proces-verbal* for opening a road situate partly within one municipality and partly within another within the county: Giguere v. Beauce (1910), Q.R. 19 K.B. 353.

Maintenance of Roads.

A municipal corporation cannot compel contribution according to area from lands which have their own front road at a distance of less than thirty arpents, for the opening and maintenance of a road which is of no benefit to such lands, and is only for the advantage of others: Therriault v. St. Alexandre (1901), Q.R. 20 S.C. 45.

Municipal councils have no power to create servitudes on lands; they can only give effect to those already created by law.

Only those lands which have an interest in the work can be charged with a servitude of road work.

The interest required by law is not the personal interest of the owner of the lands, but that arising from the situation of them.

Article 795 of the Municipal Code does not give to municipal councils power arbitrarily to charge lands with road work irrespective of any legal interest arising from their situation.

Therriault v. Notre Dame du Lac (1903), Q.R. 24 S.C. 217.

A *proces-verbal* which imposes the duty of maintaining more than one front road on the same lot of thirty arpents depth affords no ground for the annulment of the *proces-verbal,* but only ground for an application to the municipal authorities to shift the burden in conformity with art. 825 of the Municipal Code: Ste. Justine de Newton v. Leroux (1906), Q.R. 15 K.B. 159.

A *proces-verbal* which lays the maintenance of a road on ratepayers who have little or no use for it, and which is necessary and almost essential to other ratepayers of a different range of the municipality as an outlet, and who are not made to contribute to it, is unjust and oppressive and will be quashed: Beauchemin v. Roxton (1907), Q.R. 31 S.C. 86.

The appointment of a special superintendent and inspection of the premises is not required for passing by-laws amending the *proces-verbaux* for the establishment of roads. Article 774 of the Municipal Code, respecting fences and ditches on front roads, is intended to cover cases not otherwise provided for, and municipal councils may derogate from its provisions by by-law or *proces-verbal.* A by-law which, in establishing a front road, has the effect of placing the obligation to repair more than one such road on owners of land of less than thirty arpents in width is not void for that reason. The owners can demand that the new road be maintained as a highway for the portion for which they are charged, and, failing a declaration in that respect, they are only liable for work on the road in nearest proximity to their respective residences (art. 825 of the Municipal Code). The Courts should only interfere with the exercise of their discretionary powers by a municipal council when it works injustice or is clearly illegal: Blanchard v. St. David (1908), Q.R. 35 S.C. 277.

There is no statutory provision that a range shall be only thirty arpents in depth. It is merely provided that the ratepayer is not obliged to keep in repair on land of thirty arpents in width more than one front road. There is no limit to the extent of land or number of lots in a range, and the fact that one range considerably exceeds another in depth does not justify the Court in imposing on ratepayers the burden of maintaining the highway in repair: Goulet v. Ste. Anne (1908), Q.R. 35 S.C. 289.

A provision of an Act for dividing a municipality into two parts that "the ratepayers are released from liability for road work and other municipal charges in the municipality from which they are severed, notwithstanding the *proces-verbaux* to the contrary," applies to works and charges which by the effect of the separation would be imposed upon each division so as to release the other, and a ratepayer is none the less liable for roadwork within the limits of his new municipality under the *proces-verbal* in force at the time of the division. The corporation of each new municipality can amend its *proces-verbal* and make by-laws respecting roads in this territory. An Act which distinguishes local from county work and defines the latter as "works, etc., made or maintained at the expense of one or more counties or of the inhabitants of more than the local municipality in a county" does not convert local works provided for by *proces-verbaux* into county works by the mere fact of the division into two of the municipality in which they are situated: Cote v. Ste. Cecile de Milton (1908), Q.R. 18 K.B. 211.

An appeal lies to the county council from the decision of the council of a local municipality rejecting a petition to "place the roads under the control of the council of the parish." The county council seized by way of appeal of the petition can, if the majority of the members of the council of the local municipality have a personal interest in the matter, exercise all the powers of the latter council which are applicable (art. 136 of the Municipal Code). A council which in such a case passes a by-law placing the maintenance of roads upon the municipal corporation in the mode prescribed by art. 535 of the Municipal Code exercises administrative functions, and need not hold an *enquete* to establish the facts which are known to its members.

A by-law providing that the roads of the municipality shall be under the immediate control and charge of the corporation according to the provisions of that article "sufficiently conforms to the demand of the interested parties to place all the roads . . . under the control of the council of the parish as to all works to be done in future for the better maintenance of said roads." It cannot be annulled on the ground that it provides for something that was not demanded.

St. Charles des Grondines v. Portneuf (1909), Q.R. 18 K.B. 380.

A municipal corporation charged with the maintenance of roads by virtue of art. 535 of the Municipal Code cannot by by-law make any exceptions other than those specified in that article. It cannot, therefore, except from the maintenance of fences a road opened up by the Government (and handed over to the corporation) under a special Act by which the adjoining owners had received an indemnity for the maintenance for all time by them and their heirs of the fences upon it.

A road which crosses obliquely and divides into two parts land bounded by a front road is not a front road for the part of the land beyond, which has become a distinct property on being acquired by a new owner.

Carden v. St. Michel de Rougemont (1909), Q.R. 38 S.C. 42.

Roads in village municipalities being front roads, the county council cannot by a *proces-verbal* order them to be maintained nor can it order that the road to which the *proces-verbal* refers be maintained by each municipality through which it passes. Where a county council declares that a local road shall be a county road, it can impose upon the local municipalities the burden of its maintenance. It cannot by a *proces-verbal* compel them to perform the work of opening them. *Proces-verbaux* so made do not impose on a local municipality an imperative duty which it can be compelled by mandamus to perform: Beaudet v. Leclercville (1910), Q.R. 38 S.C. 77, reversing (1909), 37 Q.R. S.C. 276.

A *proces-verbal* which imposes on a single ratepayer nearly the whole cost of opening and maintaining a road which is of no benefit to him, and which is declared to be a front road for the manifest purpose of so imposing the cost, is unjust and oppressive and will be quashed: St. Louis du Ha! Ha! v. Thomas (1912), Q.R. 22 K.B. 303.

A front road is one which runs across the lots of a range and does not lead from one range to another. The first part of art. 801 of the Municipal Code (art. 581 of the new Code), which provides that if, by reason of special circumstances, the work to be done on a front road by a ratepayer exceeds by more than one-half the average of the work to be done upon the same road by the proprietors of lots of equal value, that ratepayer can be exempted from a part of the work upon or cost of such road, confers upon municipal councils a discretionary power which it can exercise without contravening the law. If, on account of the refusal of the council to exercise this power in the adoption of a regulation, an injustice results, the injured person can appeal to the council of the county, but it is a well established rule that the Superior Court can intervene in such a matter only when there is an injustice so grave that it is equivalent to an oppression or manifests bad faith equivalent to fraud: Cacouna v. Thibault (1914), Q.R. 25 K.B. 213.

Winter Roads.

In laying out a winter road outside the bounds of a summer route, a municipal council can exercise only the powers conferred by art. 840 of the Municipal Code, and an owner of land facing the summer route cannot attack the road chosen by the council: Pesant v. St. Leonard (1905), 7 Que. P.R. 220.

Prescriptions.

The prescription of six months under art. 2558, R.S.Q., does not apply to an action by a municipal corporation to recover from a ratepayer his proportion of the cost of keeping in repair a ditch on the side of the road: Tourville v. St. Francois de Salles (1903), Q.R. 23 S.C. 67.

The prescriptions of the Municipal Code respecting appeals to the county council or to the Circuit Court do not apply to acts which are *ultra vires:* Forest v. L'Assomption (1915), Q.R. 48 S.C. 151, O.R. 25 K.B. 508.

Joint Rural Inspectors.

Where two rural inspectors are appointed "joint superintendent," they must act together in giving notices, holding meetings, etc.: Comeau v. Ste. Edwidge de Clifton (1899), Q.R. 15 S.C. 405.

Penalties for Neglect to Maintain Roads.

The inspector of roads may recover from a municipal corporation having control of a road the penalty imposed by art. 793 of the Municipal Code for neglect to maintain the road, especially where the bad state of it was not caused by the fault or negligence of the inspector. The corporation cannot escape the penalty by showing that the road was repaired with a due diligence and that its bad condition was due to causes for which it could not be blamed: Leroux v. St. Marc de Cournoyer (1896), Q.R. 10 S.C. 297.

Right to Attack Proces-Verbaux.

If a *proces-verbal* states that a road will pass at a place where there is a cheese factory or at any other place where it cannot pass without the consent of the owner of the land, or if it imposes the duty of erecting fences on persons who cannot be obliged to erect them, the owner or person illegally subject to the burden can alone attack the *proces-verbal* on that ground: Mondoux v. Yamaska (1902), Q.R. 22 S.C. 148.

Rigorous precision is not required in the language of a *proces-verbal* describing work to be done; inaccuracies which render it obscure are not reasons for setting it aside. The council can at any time amend the text so as to render it intelligible: St. Christophe v. Arthabaska (1906), Q.R. 29 S.C. 493.

Sidewalks.

Road commissioners in Quebec are entrusted with the management of making and repairing of roads. This trust comprises the roadbed only, and does not extend to the construction and maintenance of sidewalks, which fall exclusively under the jurisdiction of the corporation of the municipalities within which they are situate: Raby v. Road Commissioners a Barriére de Montreal (1912), Q.R. 42 S.C. 26, 2 D.L.R. 511.

OTHER CASES.

Where a power company builds a dam across a river and thereby causes a rise in the level of it, resulting in the erosion and eating away of the banks of the river, the company should protect the banks along which highways run by means of revetment walls and guard rails, so as to insure the safety of pedestrians and vehicles using the highway: Richelieu v. Montreal and St. Lawrence Light and Power Company (1912), 3 D.L.R. 145.

BRIDGES.

A municipal corporation which is charged by a by-law with the control and maintenance of a bridge constructed by private persons, and has, at the same time, assumed the obligation of opening and maintaining the two ends of a road leading to it, may subsequently, after the prescribed formalities have been complied with, abrogate the by-law and abolish such bridge, which in the meantime had been destroyed after the by-law was passed: Daigneau v. East Farnham (1897), Q.R. 6 Q.B. 258.

A by-law passed by a county council, even with the prescribed formalities, is illegal if it charges two municipal corporations with the entire cost of a bridge which the county corporation has taken under its responsibility and declared to be a public bridge: Megantic v. Nelson (1899), Q.R. 17 S.C. 87.

A by-law charging two municipal corporations with the cost of reconstructing a bridge in iron without designating the land of the proprietors assessed for the work is null, and a by-law passed for the maintenance only of a wooden bridge, entailing comparatively small cost, will not serve without other formalities for the reconstruction of the same bridge in iron costing more: Ib.

When a county council has declared a local bridge to be a county bridge, it is for the local corporation responsible for its maintenance to determine by *proces-verbal* which of its ratepayers should contribute to its maintenance, the effect of the action of the county council not being to impose upon all the local ratepayers that obligation.

Though it may be irregular to subject, for work on a bridge, all the owners of lots designated on the cadastre by different numbers without indicating the number of the lot on which the land drained is situate, the irregularity does not make the *proces-verbal* a nullity when it is shown that the lots, though they bear different numbers, form one and the same tract.

As a municipal bridge should be a charge on all the ratepayers of the concession (rang) in which it is situate, certain ratepayers cannot by *proces-*

verbal be exempted from liability for its maintenance on the ground that they are already liable to maintain other bridges constructed on the watercourses which they have made to drain their own land and in their exclusive interest.

Dupuis v. St. Isidore (1900), Q.R. 17 S.C. 482, affirmed on review 28th April, 1900.

A municipal corporation cannot, under art. 1027 *et seq.* of the Municipal Code, raise by assessment on the ratepayers responsible for the maintenance of the bridge the amount of a judgment recovered against it in an action brought in consequence of an accident resulting from failure to maintain the bridge. Such a debt resulting from a *quasi delit* is due jointly and severally from all charged with its maintenance, and cannot be apportioned among them according to the area of their lands and in the proportion in which they are severally responsible for the work on the bridge: Pinsonnault v. St. Jacques the Less (1900), R. 18 S.C. 385.

A bridge which has been deemed and treated as a county bridge under former *proces-verbaux* can be declared local, although that is its situation, only by a resolution adopted or a *proces-verbal* homologated for the purpose; a mere notice of the taking into consideration of a *proces-verbal* where such declaration is made does not meet the requirements of the law.

A local corporation which, if it were declared to be a local bridge, would be obliged to maintain it in the state required by law and by the *proces-verbaux* and by-laws governing it has a sufficient interest to demand the setting aside of the *proces-verbal* which gives the bridge a local quality.

St. Ignace du Coteau Landing v. Soulanges (1903), Q.R. 25 S.C. 153.

A county council which has decided to construct a county bridge and has adopted a *proces-verbal* stating the work to be done, but without determining the cost of it, cannot delegate to a local corporation the adjudication of the enterprise or the construction and execution of the work: Forest v. L'Assomption (1915), Q.R. 48 S.C. 151, Q.R. 25 K.B. 568.

WATERCOURSES.

A road bridge over a river situate in territory which becomes a city separated from the county of which it formed part passes to the corporation of the city, and the county council has no jurisdiction over it. It is otherwise where the bridge is necessitated by the establishment of a watercourse over which the county council has jurisdiction, and the county council has jurisdiction to regulate the construction and maintenance of it though it is situate in a municipality which has ceased to form part of the county: Baie St. Paul v. Second Division of the County of Charlevoix (1916), Q.R. 50 S.C. 380.

A county corporation cannot, unless public notice for the purpose has been given, declare a watercourse, formerly under the control of a local corporation and covered by *proces-verbal* of the latter, to be a watercourse of the county and failure to give the notice is not an informality such as art. 16 of the Municipal Code permits the Court to pass over without notice, but is a fatal informality which produces an absolute nullity: McCabe v. Vaudreuil (1894), Q.R. 15 S.C. 22.

Where a part only of land is drained by a watercourse, the *proces-verbal* imposing a work of construction and maintenance of the supply on the proprietor of the land should designate specifically the part drained, and where it does not do so, the *proces-verbal* is illegal.

The *proces-verbal* imposing upon land a burden of works for a water supply creates a permanent charge upon the land which has the character of a servitude.

McCann v. Hinchinbrook (1898), Q.R. 8 Q.B. 149, following Barrette v. St. Barthelemy (1895), Q.R. 4 Q.B. 92.

By art. 881 of the Municipal Code no one is bound to make or to aid in making on his own land a watercourse of a greater depth than is necessary for the drainage of it.

A *proces-verbal* which contravenes the provisions of this law and adds to the drainage works of the ratepayers, who, in consequence of their situation, cannot benefit by the works, is illegal and null *pro tanto*, and an injured proprietor may take proceedings to have declared the nullity as to him.

Such a contravention of the law constitutes an increase of the servitude that the proprietor of the land is always allowed to repudiate, and he cannot be met with the objection that he has submitted temporarily to a resolution which is *ultra vires*.

Dionne v. Drummond (1916), Q.R. 50 S.C. 22.

HIGHWAYS AND BRIDGES.

Powers and Duties as to.

Interpretation.

429.—(1) In this Part—

"County bridge."

(*a*) "County bridge" shall mean a bridge under the exclusive jurisdiction of the council of a county.

(2) Except as provided by section 445 this Part shall not apply to a provincial road or bridge under the control of the Crown. 3-4 Geo. V. c. 43, s. 429.

Power to acquire part of highway.

430. Where by this Part power is conferred upon a council to pass by-laws for acquiring or for assuming a highway it shall include the power to pass by-laws for acquiring or for assuming part of a highway. 3-4 Geo. V. c. 43, s. 430.

What councils to exercise powers re highways and bridges.

431. Where power to pass by-laws in respect of a highway or bridge is by this Act conferred on a council, unless otherwise expressly provided, it shall be exercisable only by the council having jurisdiction over the highway or bridge, or if the highway or bridge is under the joint jurisdiction of two or more councils only by the joint action of such councils, and a by-law by all of them shall be necessary for the exercise of such power. 3-4 Geo. V. c. 43, s. 431.

What shall constitute public highways.

432. Except in so far as they have been stopped up according to law all allowances for roads made by the Crown surveyors, all highways laid out or established under the authority of any statute, all roads on which public money has been expended for opening them, or on which statute labour has been usually performed, all roads passing through Indian lands, all roads dedicated by the owner of the land to public use, and all alterations and deviations of and all bridges over any such allowance for road, highway or road, shall be common and public highways. 3-4 Geo. V. c. 43, s. 432.

"Except in so far as they have been stopped up according to law."—The right of the public to the use of land dedicated as a public highway and used by the public as such for a number of years cannot be extinguished by the act of the owner, nor can the right to use it be lost to the public by non-user of the highway: Winslow v. Dalling (1899), 1 N.B. Eq. 608.

A public highway does not cease to have that character unless it has been closed or abolished and the rights of the public to it renounced by some act of a duly constituted and competent authority qualified to act on behalf of the public, or at least there has been such a total cessation of the use of it by the public as a public highway and such a conversion of it to other uses acquiesced in by competent authority as would constitute a total abandonment by the public and such competent authority of all right to it as a public highway: Meloche v. Davidson (1902), Q.R. 11 K.B. 302, affirming (1901), Q.R 20 S.C. 26.

Montreal v. Tiffin (1910), Q.R. 20 K.B. 430, in which it was held that a power given by statute to a municipal corporation to cause a plan to be drawn of streets to be laid out or widened, with a proviso that no indemnity shall be allowed for any building or improvement made after confirmation by the Court of the plan, on the land shown therein, if not a charge on real estate in the nature of a servitude and extinguished by non-user during thirty years (art. 522 C.C.), is at least a "right" subject to the thirty years' prescription provided for in art. 2242 C.C.

The diversion under the authority of a municipal by-law of a part of the highway to run on a different course and the granting of the use of it to a mill owner—public travel on it still continuing—does not operate as an abandonment of it or to change its public character so as to entitle a person through whose land it runs to fence it in or to erect any barrier on it: Nolin v. Gosselin (1912), 18 Rev. de Jur. 306 (Que.).

See also, as to abandonment, Mills v. Freel (1912), 3 O.W.N. 1240, 4 O.W.N. 79, 2 D.L.R. 923, 5 D.L.R. 679, 23 O.W.R. 45.

A highway established by dedication does not cease to be a highway on account of the council having by resolution approved of a plan of a subdivision upon which the highway was not shown: Larcher v. Sudbury (1913), 4 O.W.N. 1289, 11 D.L.R. 111, 24 O.W.R. 659.

"All highways laid out or established under the authority of any statute."—Among these are highways laid out or established by the Quarter Sessions, as well as those laid out or established under the authority of the Municipal Acts from time to time in force, and highways laid down on registered plans, though with regard to the latter it is provided by another Act, The Surveys Act, R.S.O. c. 166, s. 44, that they shall be public highways.

PRESUMPTION IN FAVOUR OF VALIDITY OF BY-LAWS.

Where land has been used as a public highway for many years and there was an old statute authorizing its expropriation for public purposes, but the records of the municipality, which would contain the proceedings for the expropriation, if any had been taken, were lost, in the absence of evidence of dedication, it must be presumed that proceedings under the statute were rightly taken: Dickson v. Kearney (1888), 14 S.C.R. 743, Cameron's S.C. Cas. 53, reversing (1887) 20 N.S. 95.

Where a by-law was passed, many years before, for opening a highway, but no evidence is available to show that the notices which were required to be given of the intention to pass it were given, and without objection since the passing of the by-law the road has been used by the public and public money has been expended and statute labour performed upon it, it will be presumed that the by-law was legally passed: Elmsley South v. Miller (1905), 6 O.W.R. 726.

A similar conclusion had been reached before by the Court of Appeal in Palmatier v. McKibbon (1894), 21 A.R. 441.

"On which statute labour has been usually performed."—Proof that a path master had, in two years, directed the statute labour to be done on a road does not amount to proof that statute labour has been usually performed on it: Reg. v. Plunkett (1862), 21 U.C.R. 536, 541.

Nor is it sufficient that statute labour has been performed, not continuously but at intervals, and only on parts of a road that ran diagonally across four concessions: Reg. v. Hall (1866), 17 U.C.C.P. 282.

In the revision of 1913, 3-4 Geo. V. c. 43, a change, and perhaps an important one, was made in the language of this section.

Before then the language of the section was, "shall be deemed common and public highways"; not as the section now reads, "shall be common and public highways."

It had been held under the previous enactment that the effect of it was that, where statute labour has been usually performed on a road, a presumption arose that it was a public highway, but that that presumption might be rebutted by evidence to the contrary, and, therefore, that where the origin of a road was known and it was in its inception a trespass road or where the circumstances were such as to rebut any inference of a dedication which might be drawn from the performance of statute labour, the continued performance of statute labour upon it did not make it a public highway: per Osler, J.A., in St. Vincent v. Greenfield (1887), 15 A.R. 567, 571; or where the road was intended to be established by public authority without the will of the owner of the land, in which case it was said that it had become a road by the authority of the county council or it was not "legally a road at all. The fact of the public using it for ten years or expending labour and money upon it between 1846 and the present time is not sufficient to establish it as a lawful highway against the will of the owner of the soil where there is no sufficient ground for presuming a dedication": per Robinson, C.J., in Reg. v. Rankin (1858), 16 U.C.R. 304, 310. This would seem to be a narrow view as to the meaning and effect of the enactment, and but for these decisions one would have thought that the object of the legislation was to make the fact that statute labour had been usually performed on a road conclusive evidence both of dedication and acceptance.

The view that the word "deemed" means presumed merely, and that it, therefore, raised only a rebuttable presumption, is opposed to the view of a Divisional Court in In re Rogers and McFarland (1909), 19 O.L.R. 622, in which it was held that the word "deemed" means "adjudged" or "conclusively considered" for the purpose of the legislation: p. 631.

In view of the change that has been made in the language of the section, it is open to question whether these cases are any longer authorities upon the construction of the present enactment.

In Andrews v. Packenham (1904), 4 O.W.R. 6, the plaintiff failed to establish that what he contended was a highway had been established under a by-law of the council of the municipality, and the statute labour permitted by the council to be done on the alleged highway was "so insignificant in amount and performed under such circumstances as would not . . . weigh in establishing a highway": p. 8.

"All roads passing through Indian lands."—It is difficult to understand to what roads these words apply.

The difficulty was referred to by Robinson, C.J., in Byrnes v. Bown (1851), 8 U.C.R. 181, 184, who said:—

"But it never could have been meant by that clause that every by-road or short cut used by the Indians across the plains or the flats was to be established as a permanent highway, even though they should be roads only left open during the winter.

"The meaning of that clause, I think, is that roads which under the provisions of that Act" (50 Geo. III. c. 1) "were to acquire the character of legal highways should have that same legal character where they passed through Indian lands as in other parts of their course, although they might not be (as to such portions of them) public allowances made in any original survey nor had any public money been expended or statute labour performed on them."

The suggestion is ventured that the intention may have been to avoid any question as to road allowances made by the Crown in townships that were or might become Indian lands, losing their character when they passed through Indian lands.

As will have been noticed, this provision comes down from ante-confederation days, when no question could arise as to the jurisdiction of the legislature to enact it. Now that the British North America Act confers exclusive legislative authority as to "Indians and lands reserved for the Indians" upon the Parliament of Canada, it is submitted that such legislation would not be *intra vires* of a provincial legislature in so far as it applies to anything done since the British North America Act came into force, though, no doubt, as to roads in existence before then, if they had become public highways, they would continue to have that character, subject probably to the paramount authority of the Parliament of Canada to legislate as to them and to put an end to them.

The existence of "public roads laid out or used in or through or abutting upon an Indian reserve," as well as the liability of the Indians when so directed by the Superintendent General of Indian Affairs, or any officer or person by him thereunto authorized to perform statute labour on these roads, is recognized by The Indian Act, R.S.C. c. 81, s. 44, and by s. 45 provision is made for the keeping in repair of the roads, bridges, ditches and fences within the reserve.

"All roads dedicated by the owner of the land for public use."—The law as to the dedication of highways is well and compendiously stated in O'Neil v. Harper (1913), 28 O.L.R. 635, 10 D.L.R. 433, 13 D.L.R. 649, where it is laid down, though not for the first time, that land dedicated for the purpose of passage becomes a public highway when accepted for that purpose by the public; there must be the intention to dedicate. Acceptance may be inferred from public user, and no formal act of adoption is necessary. Open and unobstructed user by the public for a substantial time is, as a rule, evidence from which both dedication and acceptance may be inferred, but an intention to dedicate can only be inferred against a person who is absolute owner in fee simple and *sui juris*, all of which propositions are supported by citation of the authorities.

This form of dedication must be distinguished from dedication by a registered plan, which by statute makes roads and streets shown on it common and public highways, although the obligation to repair them does not arise until they have been established by by-law of the council or otherwise assumed for public use by the corporation: s. 460 (6).

ONTARIO CASES.

Where it is alleged that a fence encroaches upon a public highway, long and undisturbed possession by the landowner ought not to be interfered with, except upon very clear proof of the limits of the highway: Rex v. Moyer (1902), 1 O.W.R. 780, 781.

In Holland v. York (1904), 7 O.L.R. 533, a road laid out by a private person, used for many years, and a sidewalk built upon it by the corporation, under the supervision of its path master, and paid for out of money appropriated by by-law for the purpose, was held to be a public highway.

In Piper v. Paipoonge (1905), 6 O.W.R. 287, dedication and acceptance was held to be established by: (1) The use of the road by the public, the building by the corporation of a bridge connecting at each end with the road, and the ditching and grading of the road along its whole length; (2) all these things having been done to the knowledge and with the acquiescence of the landowner, who had erected his fence on the line of the road.

By an order of the Quarter Sessions, made in 1834, a highway was opened through several lots, the title to one of which was in the Crown, and it was occupied by a licensee from the Crown. The highway was never opened, but, shortly afterwards, another which followed the same general direction was opened across the located lot and other lots, and was ever afterwards regularly travelled and used as a highway, fenced off from the located lot, improved from time to time by statute labour and public money, and was treated by the locatee and his successors in title as a public highway. Letters patent were issued to a successor in title of the locatee, in which no reservation or mention of any road was made. On this state of facts it was held that there was evidence of dedication by the equitable owner, acquiesced in by the Crown, and that the road had become established as a public highway: Fraser v. Diamond (1905), 10 O.L.R. 90, 5 O.W.R. 436.

Grand Trunk Railway Company v. Toronto (1906), 37 S.C.R. 210. The owner of land, in conveying it, described it as bounded on a road allowance, and subsequent conveyances also recognized it as a road allowance. Thus describing the land was held to be a dedication of the street as a public highway. The first conveyance and a plan produced at the trial showed that the street extended across the railway track and down to the river Don, but at that time the portion between the track and the river was a marsh. The evidence established the use of the street by the public down to the marsh. The use of this portion was held to be applicable to the whole road down to the river and the evidence of user to be sufficient to show an acceptance by the public of the highway.

A street shown on a plan registered before, but practically contemporaneously with the incorporation of a village, is a public highway, and subject to the jurisdiction of the council of the village: McGregor v. Watford (1906), 13 O.L.R. 10, 8 O.W.R. 479.

The owner of land adjoining part of a road called the River Road, which had been continuously travelled by the public since the district was first established, agreed with the municipal corporation that the corporation should close the road and convey it to him in consideration of his dedicating to the public and opening up for traffic two other streets; a by-law was then passed by which it was enacted that the landowner should have the right to close up the part of the River Road mentioned in the agreement as soon as the two streets were opened for public use and travel. For several years one of the two streets was unfit for travel, and the public continued to use the River Road, and did so even after that street was opened and used, and no attempt was at any time made to close it, and it was continuously used by the public without objection, and public money was from time to time spent upon it. Upon this state of facts it was held by the Court of Appeal, in Macomb v. Welland (1907), 13 O.L.R. 335, 9 O.W.R. 143, reversing the decision of the trial Judge, (1906) 12 O.L.R. 362, 7 O.W.R. 876, that the evidence was not sufficient to establish dedication of the part of the River Road which had been stopped up.

In this case there is a very full review of the authorities, English and Canadian, bearing upon the question of dedication.

The location of a street upon a registered plan in 1856 and its use as a public road ever since was held to be a dedication of it as a public highway: Watson v. Kincardine (1908), 11 O.W.R. 669, (1909) 13 O.W.R. 327.

A lane is not a road or street within the meaning of the words, "roads, streets or commons," as used in The Surveys Act, R.S.O. 1897, c. 181, s. 39, now R.S.O. c. 166, s. 44 (1), nor is it within the purview of the section: Brett v. Toronto Railway Company (1909), 13 O.W.R. 552, 14 O.W.R. 74, 604.

Intention to dedicate must be shewn. Though there may be facts indicating an intention to dedicate, yet if, in the light of all the circumstances, there appears to be an absence of intention to dedicate, dedication is not established: Peters v. Sinclair (1912), 3 O.W.N. 1045, 4 O.W.N. 338, 8 D.L.R. 575, 23 O.W.R. 441, (1913) 48 S.C.R. 57, 13 D.L.R. 468, affirmed by P.C. 18 D.L.R. 754.

See also Rideout v. Howlett (1913), 13 D.L.R. 293, 12 E.L.R. 527, 15 D.L.R. 634 (N.B.).

Land conveyed to a municipal corporation as a highway and taken over by the corporation as a highway, and in which a sewer had been constructed by the corporation, is a public highway, and cannot be closed by an amendment to the registered plan, but only by appropriate action by the council of the municipality: In re City of Toronto, Plan M 188 (1913), 28 O.L.R. 41, 11 D.L.R. 424.

A registered plan, showing a street fifty feet wide, had attached to it a memorandum, under the seal of the corporation, and signed by the mayor, treasurer and clerk in the words, "The consent of the Corporation of the . . . is hereby given to the registration of this plan showing . . . (the street) as having a width throughout of fifty feet . . . and the said avenue is accepted as a public highway," and it was held that this memorandum amounted within the meaning of s. 44 of 1 Geo. V. c. 42, as amended by s. 32 of 2 Geo. V. c. 17 (now The Surveys Act, R.S.O. c. 166, s. 44), to an assumption by the corporation of the avenue for public use, and that the corporation had thereby, in the most formal way, accepted the avenue as a public highway: Ib.

In Larcher v. Sudbury (1913), 4 O.W.N. 1289, 11 D.L.R. 111, 24 O.W.R. 659, it was held that the evidence established the intention to dedicate and the acceptance of the dedication by the municipal corporation. When the intention to dedicate was evidenced by the landowner no patent had been issued, but the intention to dedicate continued after it was issued and the acts which constituted acceptance were also continuous.

In Beveridge v. Creelman (1877), 42 U.C.R. 29, referred to by the trial Judge, the landowner had, before the patent issued, done acts which, had the title to the land been in him, would have been sufficient to establish dedication, but the title was then in the Crown, and it was held, following Reg. v. Wismer (1850), 6 U.C.R. 293, that his acts done before the patent did not bind the Crown, but that what was done after the patent was issued was sufficient to establish by dedication the road as a public highway.

In Rae v. Trim (1880), 27 Grant. 374, also referred to by the trial Judge, it was held that persons in possession of Crown lands cannot, before the patent issued, dedicate any part of them, but may so far bind themselves by their acts as that, when a patent has issued to them, the lands granted would be bound by any right or easement to which their sanction had been obtained.

The fact that the owner of land obtained from the Crown a confirmatory grant of it, in which a plan was referred to and public streets within the tract as described in the grant were excepted, one of these shown on the plan being a street which the corporation claimed to be a public street, was held to be a recognition and acceptance of the existence of the street, and it was also held that thereafter neither the patentee nor any successor in title could set up that it was not a public street as shown on the plan: Niagara Navigation Company v. Niagara (1913, 4), 31 O.L.R. 17, 25 O.W.R. 42.

A municipal council has no power, by declaring that land is a public highway, to make it a public highway, and so declaring is not equivalent to the establishment of a new highway: Niagara v. Fisher (1914), 5 O.W.N. 881.

A similar conclusion had been before reached in Rex ex rel. McMullen and Caradoc (1872), 22 U.C.C.P. 356.

In Reaume v. Windsor (1915), 7 O.W.N. 647, 8 O.W.N. 505, affirmed by the Supreme Court of Canada, 2nd May, 1916, dedication was proved, and it was held that acceptance by the corporation was established by the construction and maintenance of pavements and sidewalks by the corporation at its own expense, although no by-law signifying acceptance was in evidence.

A street laid down on a registered plan of a survey of a part of a township lot, made after the provisions as to plans were extended to townships, is a public highway, and the council of the township may stop it up by passing a by-law for that purpose: Jones v. Tuckersmith (1915), 33 O.L.R. 634, 23 D.L.R. 569.

ALBERTA.

In the absence of acceptance by the municipal corporation of a street shewn on a registered plan and evidence of user of it by the public or of the sale of land in the subdivision, the street is not a public highway: Marsan v. Grand Trunk Pacific Railway Company (1909), 2 A.L.R. 43, 10 W.L.R. 465, 9 Can. Ry. Cas. 341.

Land traversed by an old trail was surveyed under Dominion authority, and the trail surveyed and laid out on the ground more than sixty-six (66) feet wide, but the plan had not been approved by the Surveyor-General, and it was held that s. 108 of The North-West Territories Act, 60 & 61 Vict. c. 28, s. 19, gave the surveyor no power to increase the width of the highway, that the approval of the plan by the Surveyor-General, and the filing of it in the Land Titles Office were necessary conditions to the transfer of the trail as a public highway, and that the land comprised in the augmentation of the highway remained vested in the landowner: Rowland v. Edmonton (1915), 50 S.C.R. 520, 21 D.L.R. 33, reversing (1914), 20 D.L.R. 36, 28 W.L.R. 920, 6 W.W.R. 1498.

BRITISH COLUMBIA.

Victoria v. Silver Spring Brewery (1910), 14 W.L.R. 626, was a case of dedication being established by the street being shown on a map registered under statutory authority, which the Act required should exhibit all roads, streets, etc., set apart for public use.

Manitoba.

A survey, which was not originally legal and binding, is not made so by a Dominion Order-in-Council, and the Crown, after granting the patents for the lands, cannot interfere with the private rights of persons holding under them: Heath v. Portage La Prairie (1909), 18 Man. L.R. 693, (1908) 9 W.L.R. 512, (1909) 11 W.L.R. 99, following Pockett v. Poole (1897), 11 Man. L.R. 508.

Where a road, which was only sixty-six feet wide for many years prior to a survey made by a Dominion land surveyor, under the direction of the Surveyor-General, who had instructed him to make the road ninety-nine feet wide, it was held that this did not affect an alteration in the width of the road; that the Surveyor-General had no authority to make it of a greater width than it had been or to deprive the landowner of any of his land by giving the direction which he gave: St. Vital v. Mager (1908), 9 W.L.R. 161, (1909) 19 Man. L.R. 293.

The right of the public in a street over a railway right of way is not limited to the part planked and gravelled for traffic, because no by-law has been passed under 7 & 8 Edw. VII c. 57, s. 705, cl. (*b*) (Man.), after the crossing was ordered by the Board of Railway Commissioners, where, before the application to the Board, a by-law was passed authorizing the extension of the street across the right of way and the railway company had acquiesced in the opening of the street for its full width and had subsequently recognized its existence: Campbell v. Canadian Northern Railway Company (1913), 23 Man. L.R. 385, 12 D.L.R. 272, 24 W.L.R. 447, 15 Can. Ry. Cas. 357, 4 W.W.R. 914, reversing (1913) 9 D.L.R. 777, 23 W.L.R. 156, 3 W.W.R. 874.

New Brunswick.

Where a landowner accepts public money for improving a road over his land, although neither dedicated nor recorded as such, it becomes a public highway by virtue of 49 Vict. c. 6, and 52 Vict. c. 12: Rideout v. Howlett (1913), 13 D.L.R. 293, 15 D.L.R. 634.

See also Moore v. Woodstock Woollen Mills Company (1899), 29 S.C.R. 627, in which, notwithstanding the finding of the jury that there had been no public user, judgment had been entered for the plaintiff, who claimed that the *locus in quo* was a public highway, and the judgment was affirmed by the Supreme Court of New Brunswick, but was reversed by the Supreme Court of Canada.

Nova Scotia.

The existence of a public highway is not necessarily confined to a place that is a thoroughfare, and a *cul-de-sac* may properly exist as a highway, and may be established by dedication: De Young v. Giles (1915), 26 D.L.R. 5 (N.S.), following Bateman v. Bluck (1852), 18 Q.B. 870, 88 R.R. 813.

Open and unobstructed user of a way by the public for a substantial time is evidence from which both dedication and acceptance may be inferred and where there has been established for a number of years a travelled track, with a fence on one side and a gutter on the other, passing over the lands of others, on which statute labour is performed under municipal supervision and which is otherwise used for municipal purposes, dedication and acceptance of it as a public highway is established: Ib.

QUEBEC.

The designation by the owners of land on a plan of a lot as a street where the street is never opened does not effect such a dedication as to give the public any rights on it or relieve the corporation from the obligation to pay compensation for it when required as a public street: Warminton v. Heaton (1897), Q.R. 7 Q.B. 234.

The fact that a corporation has laid drains in a private lane is not equivalent to an acceptance of the lane as a public street, nor does the corporation, by so doing, incur any responsibility for an accident caused by a person falling on a sidewalk in the lane: Tougas v. Montreal (1897), Q.R. 12 S.C. 532.

Dedication of a highway is established by the following facts:—

(1) Registration by the landowner of a subdivision plan and deposit of book of reference on which the highway is indicated and described as a road or street.

(2) The opening and laying out of the land by the owner as a street and placing sidewalks on it.

(3) The free and uninterrupted use of the street by the public for more than ten years.

(4) Exploiting the adjacent land by the owner and selling lots as bounded by a public street.

(5) Use of the highway by the public as the only direct access to the railway station.

(6) Acceptance of the dedication by the public and the municipal corporatior, the uninterrupted use of the street being a sufficient acceptance.

Shorey v. Cook (1904), Q.R. 26 S.C. 203.

A road originally opened as a private road on private property will not be presumed to have become a public road in the possession of the corporation of the municipality in which it lies merely because the owner has allowed the public to use it for six years without objection: Onslow v. McGough (1906), Q.R. 30 S.C. 256.

A strip of land extending from a public road to the River St. Lawrence formed part of a beach lot granted by the Crown, in 1854, on condition that in case of its subdivision into building lots, "a sufficient number of cross streets shall be left open so as to afford easy communication between the public high-road, in rear of the said beach lot and low water mark in front thereof." Prior to 1865 the lot was subdivided, and on the plan the strip of land was shown as a lane or passage. Reference to this lane or passage was made in a deed of sale executed by the owner in 1865, and the cadastral plan of the municipality made in 1879 for registration purposes showed it as a public road. In 1881, in connection with the registration of charges on the land, the owner made a statutory declaration, and gave a notice to the registrar of deeds, as required by The Cadastral Act, describing the strip as a road twenty feet wide. During more than thirty years prior to the action the strip had been used as a lane or passage. These circumstances, it was held, constituted complete, clear and unequivocal evidence of the intention of the owner of the beach lot to dedicate the strip for the purposes of a public highway, and that no formal acceptance by the corporation of the municipality of the dedication was necessary to render the dedication effective: Rhodes v. Perusse (1908), 41 S.C.R. 264, affirming (1907) Q.R. 17 K.B. 60.

When a road is bordered by a ditch there is no presumption that a space between the ditch and the fences of the adjoining owners forms part of it, and, therefore, an action for possession against an owner who has built a wall on the space only lies in favour of the municipal corporation when the latter can show possession of the land for a year. The existence of a sidewalk on the strip is no proof of possession by the public when it appears that it was placed there by the adjoining owner or his *auteurs* to give to customers a better access to their shop: St. Francois Xavier de Brompton v. Salois (1908), Q.R. 34 S.C. 238.

An offer by a landowner to give to a municipal corporation land for widening a highway does not constitute a donation to the public without acceptance and taking possession by the municipal corporation during the lifetime of the donor: Montreal v. O'Flaherty (1916), Q.R. 49 S.C. 521, 28 D.L.R. 713.

TERRITORIES.

The issue of letters patent describing lands in accordance with a registered plan is an adoption of it, and has the effect of dedicating to the public highways as shown on it: Edmonton v. Brown (1893), 1 Terr. L.R. 454, (1894) 23 S.C.R. 308.

The right of the public to the free and unobstructed use of a street cannot be taken away by the existence of an obstruction when the street was dedicated, and the municipal corporation is entitled to a mandatory injunction for the removal of a building which causes such an obstruction: Ib.

See also Robertson v. High River (1907), 6 W.L.R. 281, 767.

A highway may be dedicated subject to permanent obstructions, and, when so dedicated, the public must take it as it is: Halsbury's Laws of England, vol. 16, par. 65.

Edmonton v. Brown must have been a case of dedication by a registered plan, and have been decided on the ground that a dedication of that character, where the streets laid down upon the plan are by statute made public highways, is an unqualified dedication.

BOARD OF RAILWAY COMMISSIONERS OF CANADA.

Where an application was made to expropriate a strip of land from a municipal corporation, which the applicant contended to be private property, and not, as contended by the corporation, a public lane or highway, and it appeared that a portion of the land had been leased by the corporation to a railway company for its right of way, and in the lease there was a recital that the lane was no longer necessary for public purposes, it was held that this declaration could not be regarded as evidence of the acceptance of the dedication of the strip of land, and, it not having been otherwise accepted or dedicated as a public lane, it was not in fact a public lane: Grand Trunk Railway Company v. Guelph (1911), 12 Can. Ry. Cas. 371 (Board of Railway Commissioners of Canada).

OTHER CASES OF DEDICATION.

Hay v. Bissonnette (1909), 14 O.W.R. 279, 1231, 1 O.W.N. 287, (1910) 2 O.W.N. 189 (the case of a road laid out upon a registered plan and assumed by by-law of the council).

McLean v. Howland (1910), 1 O.W.N. 1036 (public highway held to be established by sale of the land to the corporation and by other acts).

Peake v. Mitchell (1913), 4 O.W.N. 988.

In re Sanderson and Sophiasburgh (1916), 38 O.L.R. 249, 33 D.L.R. 452.

Baldwin v. O'Brien (1916), 10 O.W.N. 304.

Leclerc v. Phillips (1894), Q.R. 4 Q.B. 288.

Lavertu v. St. Romauld (1896), Q.R. 11 S.C. 254.

See also cases noted under s. 460 (6).

HIGHWAYS ON PUBLIC WATERS WHEN FROZEN.

The Bay of Quinte is a highway and open to the public, and upon its waters, when frozen, any person may travel on foot or driving an animal. The right to cut the ice is subordinate to the right of travel: Little v. Smith (1914), 32 O.L.R. 518, 20 D.L.R. 399.

433. Unless otherwise expressly provided, the soil and freehold of every highway shall be vested in the corporation or corporations of the municipality or municipalities, the council or councils

Highways vested in corporation having jurisdiction over them.

of which for the time being have jurisdiction over it under the provisions of this Act. 3-4 Geo. V. c. 43, s. 433.

In Quebec "the land occupied by any municipal road belongs to the corporation having the control of such road" (art. 466 of the new Municipal Code).

In the other provinces, except in Nova Scotia, under The Towns' Incorporation Act, Rev. Stats. 1900, c. 71, as amended by Stats. 1902, c. 21, s. 1, the soil and freehold of the highways are vested in the Crown, and under that Act the highways are "absolutely vested in the town."

A statute which vests in a municipal corporation the public streets of the municipality, subject to any right in the soil which the individuals who laid out a street may have reserved, vests not merely the surface, but the freehold as well: Cotton v. Vancouver (1906), 12 B.C.R. 497, following Roche v. Ryan (1891), 22 O.R. 107.

According to the principles of the municipal law of Quebec, the land of an abolished road returns to the lot from which it was detached, or, if it has not been taken from the adjoining lot, it belongs to the lots between which it is situate, half of it to each lot: Cormier v. Vaillant (1913), Q.R. 24 K.B. 161.

This is provided by art. 467 of the new Municipal Code.

See Ross v. East Nissouri (1900-1), 1 O.L.R. 353, noted under s. 399, pars. 52, 53, 54.

Jurisdiction of councils over highways.

434. Except where jurisdiction over them is expressly conferred upon another council, the council of every municipality shall have jurisdiction over all highways and bridges within the municipality. 3-4 Geo. V. c. 43, s. 434.

Exception as to road owned by company, etc.

435. The next preceding two sections shall not apply to roads or bridges owned by companies or individuals. 3-4 Geo. V. c. 43, s. 435.

Jurisdiction of county councils over roads and bridges.

436.—(1) The council of a county shall have jurisdiction over every

(*a*) Highway, bridge and boundary line assumed by the council;

A bridge crossing a river which formed the boundary line between a township and a town in the same county was built by private persons. It was repaired in 1875 by a committee of the county council, and the repairs were paid for by the county corporation in the following year, but no repairs were afterwards made by the county, and the bridge was kept in repair by private subscriptions, and had been constantly used by the public, the road of which it formed part being a public highway accepted and used as such for 40 years.

Held, that the bridge had been assumed in 1875 as a county bridge, but, whether or not it was ever formally assumed by the county, it was the duty of the county to maintain it.

In re Pembroke and Renfrew (1910), 21 O.L.R. 366.

(*b*) Bridge crossing a river, stream, pond or lake forming or crossing a boundary line between local municipalities other than a city or separated town in the county: and

(*c*) Bridge crossing a river or stream over 100 feet in width within the limits of a village in the county where the bridge forms part of a main highway leading through the county.

HOW WIDTH TO BE DETERMINED.

In determining the liability under this subsection the width of the river at the level attained after heavy rains and freshets in each year should be taken into consideration; the width at ordinary high water mark is not the test of liability: New Hamburg v. Waterloo (1893), 22 S.C.R. 296, followed and applied in In re Caledonia and Haldimand (1912), 3 O.W.N. 1654.

A river, which, where passing through a village, divides into two channels, which reunite, enclosing an island, and is more than 100 feet wide above and below the island, is a river over 100 feet in width within the meaning of this subsection at points where it is divided into two channels if the two channels together are more than 100 feet wide, although each of them is of less width.

In re Newburgh and Lennox and Addington (1907), 10 O.W.R. 541. In that case it was also held that the width is to be determined with reference to the width of the river and not to the length of the bridge.

Power to limit jurisdiction.

(2) The council may provide that the jurisdiction conferred upon it by clause (*b*) of subsection 1 shall not extend to bridges over rivers, streams, ponds or lakes, less than 80 feet in width, or of such width less than 80 feet, as may be specified in the by-law. 3-4 Geo. V. c. 43, s. 436.

Jurisdiction over bridges on county boundaries.

437. The councils of the corporations whose duty it is to erect and maintain bridges over rivers, streams, ponds or lakes forming or crossing a boundary line between counties shall have joint jurisdiction over such bridges. 3-4 Geo. V. c. 43, s. 437.

Over bridges on boundaries between county and city, etc.

438. The councils of the corporations whose duty it is to erect and maintain bridges over rivers, streams, ponds or lakes forming or crossing a boundary line between a county and a city or separated town shall have joint jurisdiction over such bridges. 3-4 Geo. V. c. 43, s. 438.

Over boundaries between local municipalities.

439. The councils of the local municipalities between which they run shall have joint jurisdiction over all boundary lines, whether or not they form also county boundary lines, which have not been assumed by the council of the county, and over the bridges on them except such bridges crossing rivers, streams, ponds or lakes forming or crossing such boundary lines as by the provisions of this Act are under the jurisdiction of another council or other councils. 3-4 Geo. V. c. 43, s. 439.

Jurisdiction where corporation owns bridge, etc., in another municipality.

440. Where a boulevard, drive or highway or a public avenue or walk is owned or has been opened and laid out or is under the authority of this Act assumed, or a bridge is owned or has been constructed or is under the authority of this Act assumed by the corporation of a municipality other than that in which it is situate the council of that corporation shall have jurisdiction over it. 3-4 Geo. V. c. 43, s. 440.

Assumption by villages of bridges under control of county.

441.—(1) The council of a village may pass by-laws for the assumption by the corporation of the village, with the consent of, and on such terms and conditions as may be agreed on with, the council of the county, of any bridge within the limits of the village and under the jurisdiction of the council of the county.

Effect of by-law.

(2) When the by-law takes effect the bridge shall cease to be under the jurisdiction of the council of the county and shall come

and thereafter remain under the jurisdiction of the council of the village, and shall be and remain toll free. 3-4 Geo. V. c. 43, s. 441.

Approaches to bridges.

442. The council having jurisdiction over a bridge shall have jurisdiction over the approaches to it for 100 feet next adjoining each end of the bridge. 3-4 Geo. V. c. 43, s. 442.

See notes to s. 449 (1).

It was held in Traversy v. Gloucester (1888), 15 O.R. 214, that the word "approaches," in s. 530 of 46 Vict. c. 18, meant "such artificial structures as may be reasonably necessary and convenient for the purpose of enabling the public to pass from the road to the bridge and from the bridge on to the road," and does not include the highway to the distance of 100 feet from each end of the bridge—at all events unless the artificial structures extend so far. The opinion, which was, however, only an *obiter dictum* was expressed that the effect of s. 530 was not to relieve the local municipality from its liability under s. 531 of the same Act, but that that liability still continued notwithstanding the provisions of s. 530.

It is open to question whether this *dictum*, if it correctly stated the law as it then stood, is applicable to the provisions of the present Act.

Section 442 of the present Act is substantially the same as s. 530, but s. 460 (1) differs from s. 531, which it replaces. It imposes the duty of keeping in repair the highways and bridges upon the corporations, the councils of which have jurisdiction over them. Section 531 provided that they should "be kept in repair by the corporation," which was taken to mean the corporation in which they were vested, and, as the highways were, with certain exceptions, vested in the corporation of the municipality in which they were situate, the road in question in Traversy v. Gloucester was vested in the defendant corporation and the duty of keeping it in repair rested upon it.

Under the present Act, if approaches to bridges are included in s. 460 (1) as being a highway or bridge, the duty of keeping them in repair rests, not upon the corporation of the local municipality, but upon the corporation the council of which has jurisdiction over it, and by s. 442 the council having jurisdiction over a bridge has jurisdiction over the approaches to it for 100 feet next adjoining each end of the bridge.

Joint maintenance of roads where land annexed to city or town.

443. Where land annexed to a city or town under this Act abuts on a highway the highway shall be under the joint jurisdiction of the councils of the city or town and the adjacent municipality or municipalities. 3-4 Geo. V. c. 43, s. 443.

Agreements between adjoining municipalities as to maintenance of boundary road.

444.—(1) The corporations of adjoining municipalities may enter into an agreement for the maintenance and repair of any highway forming the boundary between such municipalities, including the bridges thereon which it is their duty to maintain and repair, whereby each of them may undertake, for a term of years not to exceed ten years, to maintain and keep in repair any portion of such highway for its whole width, and to indemnify and save harmless the other from any loss or damage arising from the want of repair of such portion.

Agreement to be registered.

(2) When the agreement is confirmed by by-law of the council of each of the municipalities, the by-law shall be registered in the registry office of the registry division in which the highway is situate.

Effect of.

(3) After the registration of the by-law, each corporation shall have jurisdiction over that portion of the road which it has undertaken to maintain and keep in repair, and shall be liable for the damages incurred by reason of neglect to maintain and keep the same in repair; and the other corporation shall be relieved from all liability in respect of its maintenance and repair. 3-4 Geo. V. c. 43, s. 444.

Proclamation bringing government road or bridge under jurisdiction of municipality.

445. Where the Lieutenant-Governor in Council by proclamation declares, which it shall be lawful for him to do, that any public road or bridge under the control of the Minister of Public Works shall not be under his control after a day named in the proclamation, such road or bridge shall after that day cease to be under the control of the Minister and no tolls shall be collected thereon and the road or bridge shall be under the jurisdiction of the council of the local municipality in which it is situate, or if it is partly situate in two or more municipalities shal be under the jurisdiction of the councils of such municipalities, each having jurisdiction over the part which lies within its municipality, or if it lies between two or more municipalities shall be under the joint jurisdiction of their councils. 3-4 Geo. V. c. 43, s. 445.

446.—(1) The council of a county may by by-law assume as a county road any highway, or as a county bridge any bridge, within a town, not being a separated town or within a village or township.

Assumption by county councils of highways, bridges and boundary lines.

(2) The by-law shall not take effect until assented to by the council of the town, village or township.

(3) The council of a county may also by by-law assume as a county road any county or township boundary line.

(4) The council of a county may also by by-law assume as a county road any highway in a town, not being a separated town, or in a village or township which connects with a county road.

(5) Where a highway is assumed under this section the bridges thereon shall also be assumed as county bridges.

Repeal of by-law.

(6) A by-law passed under the authority of this section may be at any time repealed by the council of the county.

Effect of repeal.

(7) After the repeal of the by-law such highway or bridge shall cease to be under the jurisdiction of the council of the county and shall fall and be under the jurisdiction of the council or councils which had jurisdiction over it at the time of the passing of the by-law for assuming it. 3-4 Geo. V. c. 43, s. 446.

A road company incorporated under The Road Companies Act, C.S.U.C., c. 49, which takes from a county corporation a conveyance of a road upon terms requiring the company to keep and maintain it in repair, is not thereby debarred from exercising its statutory right to abandon the whole or part of the road: Ottawa and Gloucester Road Company v. Ottawa (1913), 4 O.W.N. 1015, 10 D.L.R. 218, 24 O.W.R. 344, 984, 5 O.W.N. 57, 13 D.L.R. 944, citing Reg. v. Haldimand (1876), 38 U.C.R. 396.

In the same case it was held that a bridge is not an intermediate part of a road within the meaning of The Road Companies Act when the terminus of the road, including one end of the bridge, is assumed by a municipal corporation which has extended its boundaries, and a road company may abandon the remainder of the bridge, without the consent of the corporation in whose territory it lies, by passing a by-law to that effect and giving notice of it under the Act.

Assuming highway in adjacent municipality as a public avenue or walk.

447.—(1) The council of a city or town may pass by-laws for assuming for the purpose of a public avenue or walk any highway in an adjacent local municipality and for acquiring so much land on either side of such highway as may be required to increase its width to not more than 100 feet.

Assent of other council.

(2) The by-law shall not take effect unless or until it is assented to by by-law of the council of the adjacent municipality. 3-4 Geo. V. c. 43, s. 447.

Abandonment by county of roads.

448.—(1) The council of a county may by by-law abandon the whole or any part of a toll road owned by the corporation of the county or of any other road owned by it, whether the road is situate wholly within the county or partly within it and partly within an adjoining county.

Clerk to transmit copies of by-law.

(2) Forthwith after the passing of the by-law the clerk shall transmit by registered post to the clerk of every local municipality through or along or on the border of which the road runs a copy of the by-law certified under his hand and the seal of the corporation to be a true copy.

Approval of Municipal Board.

(3) The by-law shall not take effect unless or until it is approved by the Municipal Board, nor shall it take effect as to the part of the road lying within or along or on the border of a local municipality whose council does not by by-law assent to the by-law.

Jurisdiction after abandonment.

(4) From and after the taking effect of the by-law the council of a municipality within which any part of the road so abandoned lies shall have jurisdiction over that part of it which lies within the municipality, and where any part of a road so abandoned lies between or on the border of two or more local municipalities the councils of such municipalities shall have joint jurisdiction over that part of it.

Exception.

(5) Nothing in this section shall extend or apply to a bridge which under the provisions of this Act is to be maintained wholly

or partly by the corporation of the county. 3-4 Geo. V. c. 43, s. 448.

Bridges over 300 ft. in length in townships and certain towns may be declared county bridges.

449.—(1) A bridge of a greater length than 300 feet in a town having an equalized assessment of less than $1,000,000 or in a township may, on the application of the council of such town or township, be declared to be a county bridge where—

The section is not limited to bridges crossing rivers, streams, ponds or lakes to the exclusion of bridges crossing ravines: In re Mud Lake Bridge (1906), 12 O.L.R. 159.

" Greater length than 300 feet."—A structure, for crossing a lake, consisting of a wooden section, 243 feet long, spanning the waters at low water, and embankments at either end, 140 and 260 feet in length respectively, the whole width being covered at high water, is a bridge over 300 feet in length within the meaning of this section: In re Mud Lake Bridge (supra).

In In re Casselman Creek Bridge (1908), 15 O.L.R. 586, it was held on the evidence that the embankments at the end of a wooden structure, 44 feet long, crossing Casselman Creek, were not to be regarded as forming part of the bridge. The distinction between this case and the Mud Lake Bridge case was that in the latter case the embankment was within the limits of the lake, and there had been a bridge 643 feet long, and, except where the wooden structure stood, the embankment had been built upon this bridge, so that what had taken place was practically but a change in the character of the bridge. In the Casselman Creek Bridge case the embankment was built not within either the limits of the creek or of the river St. Lawrence, into which it flowed, at high or low water mark, but upon land that was boggy or swampy, that condition of which did not arise from the overflowing of the water, which was only occasional, and there was nothing to show it would have prevented the road from being a serviceable one if the embankments had not been made.

In In re Maidstone and Essex (1908), 12 O.W.R. 1190, it was held that the bridges in question over a river were over 300 feet in length, and that, in determining their length, as to one of them, approaches made by raising the grade of the highway several feet "by the deposit of logs and slabs, sawdust and earth," and, as to the other, embankments made by filling in with earth, sawdust and logs, which in high water were covered by the waters of the river, were to be included.

The earthen embankments formed for the purpose of making approaches to a bridge are not to be included in computing the length of the bridge for the purpose of this section: In re Ashfield and Huron (1917), 11 O.W.N. 369.

The section does not apply to a bridge which it is proposed to erect, but which has not been erected: In re Malahide and Elgin (1917), 11 O.W.N. 403.

In this case there had been a bridge less than 300 feet in length, but it had fallen down, and it was proposed to replace it by a bridge more than 300 feet long.

The view was expressed that, if there had been a bridge more than 300 feet long in actual existence, and if, after having been declared a county bridge, it had fallen, the word "maintain" in the section would be sufficient to impose on the county corporation a duty to rebuild or to share in the cost of rebuilding, and to such a situation the words of Patterson, J.A., in In re Townships of Moulton and Canborough and County of Haldimand (1885), 12 A.R. 503, at p. 506, apply.

(*a*) It is used by the inhabitants of other municipalities;

"Used."—The user mentioned in this clause need not be by the inhabitants of municipalities within the county; the material point is its extensive use for travel by neighbouring municipalities, whether in or out of the county, nor is it necessary that the road which affords such means of communication should be either a line of road extending through the municipalities referred to or a main trunk road with branches into different municipalities; all that is necessary is that it should be an important road connected with other roads or ways forming a means of communication by which the inhabitants of such municipalities may pass and repass over the bridge: In re McNab and Renfrew (1905), 11 O.L.R. 180.

(*b*) It is situate on an important highway affording means of communication to several municipalities; and

(*c*) On account of its length, and for the reasons mentioned in clauses (*a*) and (*b*), it is unjust that the burden of maintaining and repairing it should rest upon the corporation of the town or township.

Order of Judge.

(2) An order declaring the bridge to be a county bridge may be made by a Judge of the County Court of the county in which it is situate, on the application of the council of the town or township.

Notice of application.

(3) Notice of the application shall be served on the corporation of the county, at least thirty days before the day on which it is to be made.

Hearing.

(4) Each corporation shall be entitled to be represented by counsel on the hearing of the application, and the evidence may, if the Judge sees fit, and shall if either party so requests, be given under oath.

Power of Judge.

(5) If the Judge is of opinion that, for the reasons mentioned in subsection 1, the bridge should be declared to be a county bridge, he shall by his order so declare, and in that case he shall determine whether the expense of maintaining and repairing the bridge shall be borne by the corporation of the county or partly by it and partly by the corporation of the town or township, and if he determines that it should be borne partly by each, he shall fix the proportions in which the expense is to be so borne, and his declaration and determination shall be embodied in the order.

Registration of order.

(6) If the order declares the bridge to be a county bridge it shall be registered in the registry office of the registry division in which the bridge is situate.

Appeal.

(7) An appeal shall lie from the order of the Judge to a Divisional Court and the proceedings upon and incidental to the appeal shall be the same as in the case of an appeal from a Judge of that Court, sitting in Court.

Registration of order of Divisional Court.

(8) If the order is reversed or varied by the order of the Divisional Court, or if an order declaring the bridge to be a county bridge is made by the Divisional Court, the order of that Court shall be registered as provided by subsection 6.

Effect of order after registration.

(9) Where the order of the Judge of the County Court declares the bridge to be a county bridge, except where it is reversed, and subject to any variation of it on appeal, from and after the registration of the order, or where the order has been reversed and an order declaring the bridge to be a county bridge has been made by the Divisional Court from and after the registration of the order of the Divisional Court, the bridge shall be a county bridge.

Payment to county of proportion of maintenance.

(10) Whenever any expenditure is made by the corporation of the county in maintaining or repairing the bridge a proportion of which the corporation of the town or township is by the order required to bear, that proportion of the expenditure shall be payable by the last-named corporation to the corporation of the county on demand.

When new application may be made.

(11) Where the application is dismissed, either by the order of the Judge of the County Court or by the order of the Divisional Court, a new application shall not be made until five years have elapsed from the date of the order, and any new application thereafter made may be dealt with without regard to the former order, and the preceding subsections shall apply *mutatis mutandis* to the application. 3-4 Geo. V. c. 43, s. 449 (1-11).

Approaches, when to form part of bridge.

(11*a*) In the case of a bridge crossing a river, stream, pond, or lake the approaches to the bridge whether consisting of embankments or other artificial works to the extent to which they are rendered necessary on account of the waters of the river, stream, pond or lake overflowing the highway on one or on both sides of the river, stream, pond or lake in times of freshets or at any other time, shall be deemed for the purpose of this section to form part of the bridge.

Application of section to construction and renewal of bridge.

(11*b*) This section shall also apply to a bridge which it is proposed to construct, including a bridge to replace an existing one and a bridge to replace one that has been carried away or destroyed or so damaged that it is necessary to rebuild it, and the application may be made before the work of construction is begun.

Determination by Judge as to length of bridge required.

(11*c*) In the case of an application to which the next preceding subsection applies it shall be the duty of the Judge to consider and determine whether a bridge of the length of that which it is proposed to erect is necessary for the purpose for which it is to be erected and if he is of opinion that a bridge of 300 feet or less will be sufficient for that purpose it shall be the duty of the Judge so to determine and to refuse to make an order under this section.

Provision for new application in certain cases.

(11*d*) Where an application has been made under this section within twelve months before the enactment of subsections 11*a*, 11*b* and 11*c* and has been refused but ought to have been granted if those subsections had then been in force notwithstanding the provisions of subsection 11, a new application may be made at any time. 7 Geo. V. c. 42, s. 21 (1).

Power to agree as to maintenance.

(12) In the case provided for by this section the councils of the town or township and the council of the county may at any time enter into an agreement as to the proportions in which the cost of maintaining the bridge and keeping it in repair shall be borne by their respective corporations [or in a case to which subsection 11*b* applies as to the proportions in which the cost of constructing and maintaining the bridge and keeping it in repair shall be borne by their respective corporations]. 3-4 Geo. V. c. 43, s. 449 (12); 7 Geo. V. c. 42, s. 21 (2).

The words in brackets were added by 7 Geo. V. c. 42, s. 21 (2).

What agreement to provide.

(13) The agreement shall provide that the bridge shall thereafter or after a day to be named be under the exclusive jurisdiction of the council of the county or remain under the jurisdiction of the council of the town or township.

Order of Judge embodying agreement.

(14) The terms of the agreement shall be embodied in an order of the Judge of the County Court which may be made upon the application of either corporation, and the order so made shall supersede any former order made by him.

(15) If the agreement provides that the bridge is to come under the exclusive jurisdiction of the council of the county the order made under the next preceding subsection shall so declare.

Registration of order.

(16) The order made under subsection 14 shall be registered as provided by subsection 6, and shall have the same effect as

an order upon an application made under subsection 2, but the order shall not be subject to appeal. 3-4 Geo. V. c. 43, s. 449 (13-16).

The notes to this section were made before the passing of 7 Geo. V. c. 42, s. 21, which was created in consequence of the decisions mentioned in the notes.

Highways assumed by county to be planked, gravelled, etc.

450. The council of a county which assumes as a county road or bridge, any highway or bridge within a township, shall with as little delay as reasonably may be, and at the expense of the county, cause the highway to be graded and drained and gravelled, macadamized, or surfaced or paved with other permanent material, or the bridge to be built in a good and substantial manner and shall maintain and keep the same in repair. 3-4 Geo. V. c. 43, s. 450.

County to build and maintain certain bridges.

451. The council of the county shall cause to be built and maintained at the expense of the corporation of the county the bridges mentioned in clauses (*b*) and (*c*) of section 436. 3-4 Geo. V. c. 43, s. 451.

Maintenance of bridges on county boundary lines.

452. Where a river, stream, pond or lake forms or crosses a boundary line between two or more counties, it shall be the duty of the corporations of the counties, and where it forms or crosses a boundary line between a county and a city or a separated town, it shall be the duty of the corporations of the county and the city or separated town to erect and maintain bridges over such river, stream, pond or lake. 3-4 Geo. V. c. 43, s. 452.

See notes to s. 325 (1) as to compensation where land injuriously affected: In re Cummings and Carleton (1894), 26 O.R. 1.

A bridge over the river Rideau, which divides the township of Gloucester from the city of Ottawa, is a river crossing a boundary line within the meaning of this section, although the bridge consists of two sections, one extending from the city side to the island and the other from the island to the township: Reg. v. Carleton (1882), 1 O.R. 277; In re Ottawa and Carleton (1914), 6 O.W.N. 615.

See also Ottawa and Gloucester Road Company v. Ottawa (1913), 4 O.W.N. 1015, 1018, 5 O.W.N. 57, 10 D.L.R. 218, 13 D.L.R. 944, 24 O.W.R. 344, 984.

Part of an original road allowance between two townships is not a boundary line between a county and a city within the meaning of this section, although a cemetery owned by a city abuts upon it, and by the provisions of the Act in force when it was acquired (29 and 30 Vict. c. 51, s. 269 (3)) it was provided that "the land, although without the municipality, shall become part thereof and shall cease to be part of the municipality to which it formerly belonged": In re Harwich and Kent and Chatham (1914), 31 O.L.R. 654.

The provision referred to is no longer to be found in The Municipal Act. The Cemetery Act, R.S.O. c. 261, s. 36, is now the only enactment which authorizes a municipal corporation to acquire land for a cemetery, and it contains no such provision.

It is probable that the decision in the case referred to may be supported on the additional ground that the provision contained in s. 269 (3) being no longer in force, the cemetery land did not form part of the city, but was part of the township.

Maintenance of boundary lines.

453.—(1) Boundary lines between local municipalities, including those which also form county boundary lines, shall be maintained by the corporations of such municipalities, and they shall also erect and maintain all necessary bridges on such boundary lines.

Exceptions.

(2) Subsection 1 shall not apply to boundary lines assumed by the council of the county or to such bridges as are under the provisions of this Act to be erected or maintained by another corporation. 3-4 Geo. V. c. 43, s. 453.

Local municipalities to erect and maintain certain bridges.

454. Where the council of a county passes a by-law under subsection 2 of section 436 it shall be the duty of the councils of the local municipalities to erect and maintain all necessary bridges from the erection and maintenance of which the council of the county is relieved by the by-law. 3-4 Geo. V. c. 43, s. 454.

Maintenance of boundary lines and bridges in

455. All boundary lines, and all bridges over rivers, streams, ponds or lakes forming or crossing a boundary line between two provisional judicial district.

or more local municipalities in a provisional judicial district shall be erected and maintained by the corporations of such municipalities and their councils shall have joint jurisdiction over them; and if the councils fail to agree as to the proportion of the expense to be borne by each corporation the same shall be determined by arbitration. 3-4 Geo. V. c. 43; s. 455.

Driftwood in Streams.

Keeping rivers free from driftwood, etc.

456.—(1) Where a river or a stream forms a boundary line between two or more municipalities in a county, the corporation of the county shall keep it free from all accumulations of driftwood or fallen timber.

What corporations to perform the work and apportionment of expense.

(2) Where the river or stream forms a boundary line between two or more counties, the duty mentioned in subsection 1 shall be performed by the corporations of the counties, and where the river or stream forms the boundary line between a county and a city or separated town, shall be performed by the corporation of the county and the corporation of the city or separated town, and in case of failure to agree in either case, as to the share or proportion of the expense incurred in performing the duty to be borne by them respectively, the same shall be determined by arbitration. 3-4 Geo. V. c. 43, s. 456.

Keeping stream free from logs, brush, etc., in townships.

457.—(1) Where a stream or creek is cleared of all logs, brush or other obstructions to the boundary line between a township and an adjoining township into which the stream or creek flows, the council of the township in which the stream or creek has been so cleared may give notice in writing to the corporation of such adjoining township requesting its council to clear such stream or creek through the municipality.

Notice requiring other townships to remove obstructions.

(2) It shall be the duty of such last-mentioned corporation, within six months after the service of the notice, to enforce the removal of all obstructions in such stream or creek within the

municipality, to the satisfaction of any person whom the council of the county in which the municipality whose council gave the notice is situate, appoints to inspect the same.

Effect of failure to perform duty.

(3) If the corporation receiving the notice neglects to perform such duty, and by reason of its neglect any highway or bridge in either of the townships becomes out of repair, the corporation in default, and that corporation only, shall be responsible for the damages sustained by any person by reason of such want of repair. 3-4 Geo. V. c. 43, s. 457.

Deviations of boundary lines.

458. Where, on account of physical difficulties or obstructions existing on a boundary line between municipalities, and in order to obtain a better line of road, a road has been heretofore or is hereafter laid out and opened which does not follow the course of such boundary line throughout, but in some place or places so deviates from it as to lie wholly within one of the municipalities, such road shall nevertheless be deemed to be, for the purposes of this Act, the boundary line between the municipalities; and a river, stream, pond or lake which crosses it where it so deviates shall be deemed to be a river, stream, pond or lake crossing a boundary line within the meaning of this Act. 3-4 Geo. V. c. 43, s. 458.

The original boundary line, unless stopped up under the provisions of the Act, remains a highway, and it may be opened under the provisions of s. 468: Euphrasia v. St. Vincent (1916), 36 O.L.R. 233, 30 D.L.R. 506.

It is by no means certain what the effect of this section is. It has been held that the result of the changes which were made by 3-4 Geo. V. c. 43, s. 458, is that the earlier cases are no longer applicable: Euphrasia v. St. Vincent (supra). In that case it was held by the Chief Justice of the Common Pleas and Lennox, J., that if the section refers to a permanent change of locality, the road in question could not be a deviation, because it was never intended to be a permanent substitute for the town line, and that if the section embraces a temporary deviation, the road might be regarded as a deviation, but the time had come to an end, because the defendant corporation, within its rights, insisted upon opening the original road allowance and ending the temporary deviation. Riddell and Masten, JJ., were of opinion that a substantial change was made in the original provision (originally enacted by 48 Vict. c. 39, s. 22) by the present section, and that the law is now more inclusive in that the provision is effective for all purposes of the Act and not simply of the section, less inclusive in that only such roads are provided for as have been or may be "laid out and opened" on account of physical difficulties or obstructions, and in order to obtain a better line of road, and they were of opinion that the road in question was not "laid out and opened" with the intention of following the boundary line even in part, and that it did not and was not intended "in some place or places" to deviate from the boundary line, and, therefore, was not a deviation.

What was claimed to be a deviation was originally a trail through the bush, used because the town line was not open. In 1860 a mill was built, and in 1865 the owner of it had the "present road surveyed or blazed" and practically built it, and it followed practically the same line as the old trail. It was not laid out by any municipal authority, but was built for the convenience of the mill owner and the customers of his mill. Later on—the precise time did not appear—the plaintiff corporation adopted the part of the road within the borders of its municipality as a township road and had statute labour done on it, repaired it, laid it in part with metal, and made a reasonably good road of it.

The view of Riddell, J., concurred in by Masten, J., was that the cases of Victoria v. Peterborough (1889), Cameron's Supreme Court Cases 608; Fitzroy v. Carleton (1905), 9 O.L.R. 686, 5 O.W.R. 615; and Wentworth v. West Flamborough (1911), 23 O.L.R. 583, (1912) 26 O.L.R. 199, 3 D.L.R. 479, 21 O.W.R. 876, had no application now, because under the provisions of the Act, as it then stood, it was immaterial why the deviation came into existence, but that under the present section the question of its origin is all-important.

His view was that "the section necessarily implies that some competent authority must be laying out and opening a road intended to follow in the main the course of the boundary line, that in the course of such laying out and opening the road 'does not follow the course of the boundary line throughout,' but 'physical difficulties or obstructions' appearing on part of the boundary line, 'in order to obtain a better line of road' it is laid out and opened deviating so 'as to lie wholly within one of the municipalities.' It is the *road* that may deviate . . . that is to say, the road that was intended to run on the line may (accidentally by reason of inaccurate surveying or) purposely, in order to shun some obstacle (or for some other cause), get off the line" . . . that "it was plain that it" (*i.e.*, the road) "was not laid out and opened with the intention of following the boundary line even in part; that it did not and was not intended in some place or places to deviate from the boundary line. It was not a deviation, whatever else it might be, even assuming that the adoption of the road by the township could be considered a ratification of Walters' " (*i.e.*, the mill owner) "action": pp. 243-4.

The result in this case was, no doubt, right. Upon the facts the road in question was not a deviation, whether the question fell to be determined under the former law or under s. 458. Having been adopted by the council of the township of Euphrasia, as it was, it was only a local road, and it would seem to be clear that, even if it had been a deviation, it would cease to be a deviation when the town line should be opened, as the council of St. Vincent had a right to insist that it should be opened.

The decision of the Divisional Court has since been affirmed by the Supreme Court of Canada (not yet reported).

It is open to question whether, if the road constituted a deviation under the former law, it would have lost that character by the change in the law which Riddell and Masten, JJ., thought had been effected by s. 458.

It would seem also that they put too narrow a construction upon the section, and that, when the question as to its meaning comes to be finally determined, it will be found that it is wide enough in its scope to cover the case of such a road as that in question, provided that it had been built or adopted by the councils of the two municipalities as part of the town line. What the section means, it is suggested, is not that the "deviation" shall be partly on and partly off the boundary line, but what is intended is that, though the road that is opened may in places deviate from the town line, it shall throughout its length be deemed to be the boundary line although part of it lies wholly within one of the municipalities.

In the Euphrasia and St. Vincent case it seems plain that the councils of the two municipalities, on account of the physical difficulties that existed, had not opened part of the road allowance between the two municipalities, and there would seem to be no reason why, if, to avoid these difficulties, the road in question had been opened by the two councils, it would not have been a deviation within the meaning of s. 458.

The earlier cases determined that it was not essential that, after departing from it at one point, the deviation should return to the boundary line at some other point, and a road which had been opened paralleling the boundary line was held to be a deviation: Wentworth v. West Flamborough (supra). In an unreported case of Ashton v. Elgin (22nd May, 1894) it was held by a Divisional Court (Q.B.) that a diagonal road made through one of the municipalities which, after leaving the boundary line at one point, did not return to it, but which enabled it to be reached by a road allowance between concessions at a point where the town line had been opened, was a deviation; and in In re Normanby and Carrick (1906), 8 O.W.R. 908, the road in question, which was held to be a deviation, returned to the boundary line only by "a side road already travelled."

Section 469, which was not referred to in Euphrasia v. St. Vincent, would seem to throw some light on the question as to what is or may be made a deviation, and to indicate that when another highway is used it does not constitute a deviation, but is used in lieu of one.

Specifications for certain bridges.

459.—(1) Every iron, steel, concrete or stone bridge constructed by the corporation of a county, and every such bridge exceeding twenty feet (20) clear span constructed by the corporation of a township shall be designed and built in accordance with general specifications approved by the Department of Public Highways.

Duplicate plans to be submitted.

(2) Plans in duplicate for any such bridges may be submitted by the council of any county or township to the Department of Public Highways, and if they are found to be in accordance with such approved general specifications the certificate of the department shall be attached, and one of such plans shall be returned to the clerk of such county or township. 6 Geo. V. c. 39, s. 10.

Liability for repair of public roads, etc.

460.—(1) Every highway and every bridge shall be kept in repair by the corporation the council of which has jurisdiction over it, or upon which the duty of repairing it is imposed by this Act, and in case of default, the corporation shall be liable for all damages sustained by any person by reason of such default.

LAWS OF OTHER PROVINCES.

In the Provinces of British Columbia, New Brunswick and Nova Scotia the Municipal Acts contain no such provision as this, but in some special cases the duty of keeping the highways and bridges in repair is imposed upon municipal corporations, and, except in those cases, municipal corporations are not liable for non-feasance, but only for misfeasance.

In Prince Edward Island the roads are kept in repair by the Provincial Government, except in the case of some towns incorporated by special Acts.

ALBERTA.

The duty of village corporations is prescribed by s. 73, Stats. 1913, 1st session, c. 5 (R.S. 1915, p. 1283), which enacts that:—

"Every council shall keep in repair all bridges, roads, culverts and ferries and the approaches thereto which have been constructed or provided by the village, or by any person with the permission of a council, or which, if constructed or provided by the province, have been transferred to the control of the council by written notice to that effect, and, in default of the council to keep the same in repair, the village shall be liable for all damages sustained by any person by reason thereof."

The duty of town corporations is prescribed by s. 350 (1) of the Stats. 1911-12, c. 2 (R.S. 1915, p. 999), which enacts that:—

"Every public road, street, bridge, highway, square, alley or other public place subject to the direction, management and control of the council, including all crossings, sewers, culverts and approaches, grades, sidewalks and other works made or done therein or thereon by the town or by any person with the permission of the council, shall be kept in repair by the town, and, on default of the town so to keep the same in repair, the town, besides being subject to any penalty provided by law, shall be liable for all damage sustained by any person by reason of such default."

The duty of rural corporations is prescribed by s. 219, as enacted by s. 14, c. 21, of the Stats. 1913, 2nd session (R.S. 1915, p. 1058), which enacts that:—

"Every council shall keep in repair all bridges, roads, culverts and ferries and the approaches thereto which have been constructed or provided by the municipality or by any person with the permission of the council, or which, if constructed or provided by the province, have been transferred to the control of the council by written notice thereof; and, in default of the council so to keep the same in repair, the municipality shall be liable for all damage sustained by any person by reason of such default."

MANITOBA.

The duty of municipal corporations is prescribed by s. 624 of R.S. 1913, c. 133, which enacts that:—

"Every public road, street, bridge and highway, and every portion thereof, shall be kept in repair by the municipality within which it lies."

And s. 625, which enacts that:—

"Subject to the provisions of the next succeeding section, if a municipality makes default in keeping in repair that portion of a public road, street, bridge or highway on which work has been performed or public improvements made by the municipality, it shall ,besides being subject to any punishment provided by law, be civilly responsible for all damages sustained by any person by reason of such default."

QUEBEC.

The obligation to repair municipal roads is imposed by arts. 453 (formerly art. 793) and 478 (formerly art. 788). Art. 453 provides that "every corporation is bound to have the roads, bridges, watercourses and sidewalks under its control maintained in the condition required by law, by the *proces-verbaux* and by the by-laws which govern them, under penalty of a fine of not more than twenty dollars for each infraction thereof.

"It is further responsible for all damages resulting from the non-execution of such *proces-verbaux*, by-laws or provisions of law saving its recourse against the ratepayers or officers in default as the case may be."

This article further provides that "no action for damages nor penal action may be taken against any such corporation without 15 days' written notice of such action being given to the secretary-treasurer of the corporation," and that the notice may be given by registered letter.

It also provides that if the corporation makes the repairs within the 15 days it cannot be prosecuted for the penalty, but is responsible for the costs of the notice.

Provision is also made that, where the road, bridge or watercourse is under the control of several county corporations, they are to be bound jointly and severally.

Art. 478 provides that "every municipal road must at all times be kept in good order, free from all holes, cavities, ruts, slopes, stones, encumbrances or impediments whatsoever, with hand rails at dangerous places in such manner as to permit of the free passage of vehicles of every description, both by day and night, except in the case mentioned in art. 553" (formerly art. 389).

"The sidewalks must also be kept in good repair, free from all holes, obstacles and impediments whatsoever, with hand rails at dangerous places."

Art. 553 authorizes the municipal inspector to permit upon "any road, ford, ferry, sidewalk, bridge or watercourse which is under the control of the corporation the performance of any work which may have the effect of obstructing, impeding or rendering inconvenient the passing over such road, ford, ferry, sidewalk, bridge, or watercourse."

In the course of performance of any such work "excavations and other dangerous places must be indicated, both by day and night, in such a manner as to prevent accident": art. 554 (formerly art. 390).

SASKATCHEWAN.

(1) The duty of city corporations is prescribed by s. 510 (1) of the City Act, Stats. 1915, c. 16, as amended by Stat. 1916, c. 18, s. 28, which enacts that:—

"Every public road, street, bridge, highway, square, alley or other public place subject to the direction, management and control of the council, including all crossings, sewers, culverts and approaches, grades, sidewalks and other works made or done therein or thereon by the city or by any person with the permission of the council, shall be kept in repair by the city, and, on default of the city so to keep the same in repair, the city, besides being subject to any punishment provided by law, shall be civilly responsible for all damage sustained by any person by reason of such default."

(2) The duty of town corporations is the same as that prescribed in the case of cities: Stats. 1916, c. 19, s. 493.

(3) The duty of village corporations is prescribed by s. 167, Stats. 1916, c. 20, which enacts that:—

"Every council shall keep in repair all sidewalks, bridges, culverts and ferries and the approaches thereto which have been constructed or provided by the village, or which, if constructed and provided by the province, have been transferred to the control of the council, and, in default of the council so to keep the same in repair, the village shall be civilly liable for all damage sustained by any person by reason of such default."

(4) The duty of rural corporations is prescribed by s. 220 of R.S. 1909, c. 87, which enacts that:—

"Every council shall keep in repair all bridges, culverts and ferries and the approaches thereto which have been constructed or provided by the municipality or by any person with the permission of the council, or which, if constructed or provided by the province, have been transferred to the control of the council; and, in default of the council so to keep the same in repair, the municipality shall be civilly liable for all damage sustained by any person by reason of such default."

CASES.

ALBERTA.

In Touhey v. Medicine Hat (1912), 7 D.L.R. 759, 2 W.W.R. 715, (1913) 5 A.L.R. 116, 10 D.L.R. 691, 23 W.L.R. 880, 4 W.W.R. 176, the view of the Ontario Courts as to the nature of the duty to "keep in repair" was followed.

Tweeddale v. Calgary (1914), 20 D.L.R. 277, in which it was held that a corporation is not absolved from responsibility for the unsafe condition of a sidewalk where it must be inferred from the nature of the work on it and the length of time it was carried on before the accident in respect of which the action was brought, that the officials of the corporation having the supervision of the streets must have been aware of the work, although it was not done under their authority, but by persons interested in adjacent lands without a permit, which, by the terms of the corporation's charter, was required.

A municipal corporation is not liable for negligence in not repairing a defect in a sidewalk with sufficient promptness where the defect was caused by a heavy coal waggon passing over the sidewalk a few hours before and the existence of the defect had not come to the knowledge of the corporation.

Since the corporation can be made liable only for breach of a corporate duty, the making and enforcing of ordinances regulating the use of streets brings into exercise governmental and not corporate powers, and, in the absence of a statute providing otherwise, a mere failure to enforce a municipal by-law requiring abutting owners to keep a sidewalk used as a crossing in a proper state of repair will not render the corporation liable for injuries to a pedestrian in consequence of a defect occasioned by its unsuitable condition for the purpose for which it was used.

Jamieson v. Edmonton (1916), 9 A.L.R. 253, 27 D.L.R. 168, 33 W.L.R. 851, 9 W.W.R. 1287, citing 28 Cyc. 1356, and Dillon on Municipal Corporations, 5th ed., s. 1627.

British Columbia.

No action can be maintained at common law for an injury arising from the non-repair of a highway, but a duty may be cast by statute upon a corporation to repair, and, if that is clearly done, the corporation will be answerable in an action for negligence: Lindell v. Victoria (1894), 3 B.C.R. 400.

In the same case it was held that the Municipal Act of British Columbia (Stats. 1892, c. 33, s. 104 (90)), which empowered a municipal corporation to raise money by way of road tax and to pass by-laws respecting roads, streets and bridges, did not cast upon the corporation the duty of keeping streets in repair.

In Gordon v. Victoria (1897), 5 B.C.R. 553, the accident was occasioned by the collapse of a bridge built by the Provincial Government and afterwards brought within the limits of the municipality. The jury found that the cause of the collapse was the breaking of a hanger supporting one of the floor beams. The corporation had substituted stirrup hangers with welds, made by its orders, on some of the beams in place of unwelded straight hangers. The jury was of opinion that a missing stirrup hanger must have broken at the welds, although there was no evidence that it had done so, and the jury also found that the corporation was blameable for the accident "because, having been made aware of the bad condition of the bridge, through the report of the engineer and otherwise, they attempted repairs, but the work was not done sufficiently well to strengthen the structure," and said that, in the opinion of the jury, "it was their duty to first ascertain the carrying capacity of the bridge before allowing such heavy traffic to pass over it." Upon motion for judgment, it was held that there was no finding of actionable negligence "whereby" the disaster was caused, and that the acts of negligence to which the jury attributed the disaster were mere non-feasance.

The act of a corporation in *de facto* taking over the care and control of a bridge under statutory authority is *primâ facie* a competent corporate act. It lies on the corporation to show clearly that acts done by its officers under their direction were *ultra vires* and illegal, and that conclusion cannot be reached merely by reason of the council not having passed a by-law vesting the bridge in the corporation. An act done by an officer of the corporation having materially weakened a beam of the bridge, which afterwards broke renders the corporation liable for an injury caused by the consequent collapse of the bridge: Victoria v. Patterson, and Victoria v. Lang, L.R. (1899), A.C 615, affirming (1897) 5 B.C.R. 628.

It had been held by the Court below that a municipal corporation is liable for damages caused by a dangerous nuisance created by it on a highway within the limits of its control, and that the misconduct will be treated as misfeasance and not mere non-feasance if the injury arises from a combination of acts and omissions on the part of the corporation—in the particular case the boring of a beam rendering it more liable to rot and its subsequent non-removal—though the acts without the omissions would not have caused the injury.

A culvert constructed of cedar covered with a few inches of earth, placed on a public road sixteen years previously, which had never been inspected, repaired or renewed during that time, became rotten, in consequence of which a horse stumbled through it and threw out the persons in the vehicle and they were injured, and it was held, following Bathurst v. Macpherson, L.R. (1879) 4 A.C. 256, that the municipal corporation had been guilty of misfeasance in allowing the culvert to become a nuisance, and was, therefore, liable to an action for the damages sustained: Cooksley v. New Westminster (1909), 14 B.C.R. 330, 11 W.L.R. 476, reversing (1909), 10 W.L.R. 106.

In McPhalen v. Vancouver, (1910) 15 B.C.R. 367, (1911) 45 S.C.R. 194, the action was for the recovery of damages for an injury sustained owing to a sidewalk being out of repair.

The Act incorporating the defendant provided that every such public street, road, square, land, bridge, and highway shall be kept in repair by the corporation, but there was no such provision giving a right of action for default in performing this obligation, as is contained in s. 460 (1) of the Ontario Municipal Act, and the sole question was as to the right of the plaintiff to maintain the action. He had succeeded at the trial, and the verdict was sustained by the Court of Appeal on an equal division among the Judges, and was upheld on appeal to the Supreme Court of Canada. In stating his opinion, Duff, J., said that there could be little doubt "that the common law rule under which the inhabitants of a parish through which highways passed were responsible for their repair was never introduced into British Columbia," p. 221, but it was nevertheless held that where, as in this case, a municipal corporation is guilty of negligent default by non-performance of the statutory duty imposed on it to keep its highways in good repair and adequate means have been provided by statute for the purpose of enabling it to perform its obligations in that respect, persons suffering injuries in consequence of the omission may maintain civil actions against the corporation to recover compensation in damages although no such right of action has been expressly provided for by statute, unless something in the statute itself or in the circumstances in which it was enacted justifies the conclusion that no such right of action was to be conferred.

In the opinions of the Judges of the Supreme Court all the most important cases bearing upon the question in issue are collated and reviewed.

This decision is in accord with the view of Mr. Justice Dillon, who speaks of the liability which the Supreme Court declared to exist as an "implied liability:" Dillon on Municipal Corporations, 5th ed., 1638, where it is said that "it is a general principle of law, founded in reason, that where one suffers an injury by the neglect of any duty of perfect obligation owing to another, the person injured has his action. This broad statement must be read subject to what is provided in s. 460 (8) of the Ontario Act, and should be qualified, as it is in Halsbury's Laws of England, vol. 27, par. 942, by limiting it to cases in which it appears to be within the purview of the statute that there should be a right of action.

After the decision in the McPhalen case, the Act of incorporation of the City of Vancouver was amended so as to remove all doubt as to the intention of the legislature to give a right of action to persons who suffered from the corporation's default in fulfilling its duty to repair, and the decision in Vancouver v. Cummings (1912), 46 S.C.R. 457, 2 D.L.R. 253, 22 W.L.R. 164, 2 W.W.R. 66, in which the appellant corporation was held to be liable for injuries caused by a defect in a sidewalk, was under the amended Act.

Vancouver v. Cummings was followed in Tweeddale v. Calgary (1914), 20 D.L.R. 277 (Alta.).

Where a statute vests in a corporation the public roads within the boundaries of a municipality and empowers the corporation to repair, but does not purport to impose a duty to repair or to create a liability on failure to do so, the corporation is not liable for injuries sustained owing to lack of repair due to non-feasance: Von Mackensen v. Surrey(1915), 21 B.C.R. 198, 22 D.L.R. 253, 8 W.W.R. 541.

Manitoba.

It was held in Wallis v. Assinoboia (1886), 4 Man. L.R. 89, that a statute which provided that "all the roads and road allowances within the province shall be held under the jurisdiction of the municipality within the limits of which such roads and road allowances are situated, and such municipality shall be charged with the maintenance of the same, with such assistance as they may receive from time to time from the Government of the Province," did not impose upon the corporation any liability for damages occasioned by defective highways or bridges.

Where a municipal corporation performs work on a public road to facilitate travel between points on both sides of the place where the work is done so as to provide a completed road between those points for public use, the corporation is liable under the Municipal Act, R.S.M. 1902, c. 116, s. 667 (now R.S.M. 1913, c. 133, s. 625), in case an accident happens by reason of non-repair of the road at any place between these points, although no work has been done at or near that particular place: Couch v. Louise (1907), 16 Man. L.R. 656, 5 W.L.R. 482.

In Davies v. Winnipeg (1910), 19 Man. L.R. 744, 15 W.L.R. 22, where injury was caused to a person by tripping over a loose plank in a sidewalk. and it was shewn that the sidewalk had been constructed ten years before and that the nails in the plank had been broken, but there was nothing to shew how that happened or how long the plank had been loose, and there was evidence that there was an inspection every seven or ten days, it was held that, although the sidewalk was out of repair, it was not shewn that it was so to the knowledge of the corporation, and that the evidence did not raise the presumption of knowledge of the existence of the defect for any stated length of time, that the method of inspection was reasonable, and that there was no evidence upon which negligence could be found.

New Brunswick.

In the absence of a statute imposing liability for non-feasance a municipal corporation is not liable in damages for personal injury caused by reason of a sidewalk having been raised to a higher level than a private way or having been allowed to get out of repair: St. John v. Campbell (1896), 26 S.C.R. 1, reversing (1895), 33 N.B. 131.

In an action against a municipal corporation for the recovery of damages sustained in an accident caused by an obstruction on a sidewalk, a pleading which contains an allegation that the corporation wrongfully and negligently allowed the sidewalk to be obstructed and wrongfully and negligently allowed the obstruction to remain there for an unreasonable time without lights or other signals on it discloses a case of non-feasance only, there being no allegation that the corporation had knowledge of the obstruction: Rolston v. St. John (1904), 36 N.B. 574.

Nova Scotia.

A municipal corporation under no statutory duty to light the streets, but which has contracted with a company to light them, is not liable for injuries caused by the negligence of the company in performing the service. The relation between the corporation and the company is not that of master and servant, but that of employer and independent contractor: Lordly v. Halifax (1892), 20 S.C.R. 505, reversing (1891), 24 N.S. 1.

Where injuries are caused by the negligence of a contractor employed by the Dominion Government to construct a concrete sidewalk around a post office, and there is no evidence that the municipal authorities participated in the doing of the work or that they were applied to for or gave permission for, the opening up of the sidewalk, although they had knowledge that the work was being done, the corporation is not liable for any act of misfeasance on the part of the contractor or his principal: Hirtle v. Lunenberg (1910), 44 N.S. 277, 8 E.L.R. 187, following Maguire v. Liverpool (1905), 1 K.B. 767, 21 T.L.R. 278.

In the absence of a statutory obligation imposed on municipal corporations an action does not lie against a corporation for injuries caused by mere non-feasance, and, in the absence of evidence that a sidewalk was defectively or negligently constructed in the first instance, the corporation is not liable to an action because of its failure to keep the sidewalk in repair: Cullen v. Glace Bay (1911), 46 N.S. 215.

Where a corporation, in laying a concrete sidewalk, breaks up a portion of the asphalt sidewalk of a crossing street and replaces it with earth and ashes, and the rain washes away the filling, it is misfeasance, and the corporation is liable to a person injured by stepping into the hole: Halifax v. Tobin (1914), 50 S.C.R. 404, 51 C.L.J. 109, affirming (1914), 47 N.S. 498, 14 E.L.R. 143.

There is no liability under the charter of the City of Halifax, s. 532, for injuries caused by mere want of repair: Coleman v. Halifax (1915), 48 N.S. 442, 22 D.L.R. 781.

QUEBEC.

Vaudry v. Montreal (1898), Q.R. 13 S.C. 531. (Where a lane had been used by the public as a thoroughfare for more than twenty years, was inscribed on the homologated plan of the municipality, and the houses on it had been numbered by the corporation, and the council had changed its name and inscribed the new name on the corporation's books, the corporation is bound to keep in repair a footway on the lane.)

A municipal corporation, when it has authorized the opening of a street, must keep it in good condition whatever may be its importance or the amount of taxes levied on the adjoining owners, and may be compelled by mandamus to fulfil its obligation: Goulette v. Sherbrooke (1904), Q.R. 25 S.C. 387.

A town corporation subject to public law under the provisions of art. 356 of the Civil Code is civilly responsible for the consequence of an accident due to the improper conditions of a road left open to traffic during the night where the lack of light enhances the risk: St. Louis v. McCray (1909), Q.R. 19 K.B. 333.

Municipal corporations are obliged to maintain their streets and sidewalks in a safe state of repair so as to allow of their use without danger; default in so doing renders them liable for damages which result from the neglect: Leblanc v. Fraserville (1912), Q.R. 42 S.C. 539, 9 D.L.R. 299.

A municipal corporation is not responsible for dangers naturally resulting from the fact that its roads extend along precipices or end at them, and is not bound to erect solid walls capable of resisting the shock of an automobile conducted or drawn out of the way.

The corporation is not bound to do more than to erect barriers or ordinary palisades to protect persons passing at the dangerous places.

Fafard v. Quebec (1916), Q.R. 50 S.C. 226.

SASKATCHEWAN.

It was held by Elwood, J., in Carlton v. Sherwood (1915), 32 W.L.R. 177, 8 W.W.R. 562 (Sask.), that it was misfeasance on the part of a corporation, in repairing a hole in the road, to put manure in it, stamping it down and filling it up to the height of a foot or so above the hole, if such repair fails to sustain vehicles passing over it, by reason of which an accident happens. This decision was reversed (1915), 25 D.L.R. 66, 32 W.L.R. 936, 9 W.W.R. 611, the Court being of opinion that the action was brought for a default in keeping in repair of the highway, and not having been brought within the period prescribed by the statute the cause of action was barred, following Pearson v. York (1877), 41 U.C.R. 378.

The use by a municipal corporation on its street railway, at street intersections, of a grooved rail is not unlawful or negligent, such a rail being in common use and necessary for the purpose for which it was used—to prevent cars leaving the track on the curves. The legislature, in authorizing the building and operating of the railway, must be taken to have authorized the use of such rails as were necessary for its reasonable operation: Regina Cartage Company v.. Regina (1916), 29 D.L.R. 420, 34 W.L.R. 1141, 10 W.W.R. 1299.

TERRITORIES.

Where a municipal corporation has by statute jurisdiction over the roads and has cast upon it the duty of maintaining them and is authorized to abate nuisances and is afforded means for raising money for corporate purposes, the corporation is liable for injuries caused to a person falling upon a sidewalk, constructed by the corporation, upon which snow and ice had accumulated and had not been removed within a reasonable time: Cuzner v. Calgary (1888), 1 Terr. L.R., 162.

It was held in Clark v. Calgary (1907), 5 W.L.R. 292, 6 W.L.R. 622, 6 Terr. L.R. 309, that a corporation in which the hghways were vested and which was required to keep them in repair was not liable to an action for a default in keeping them in repair.

See also McGillivray v Moose Jaw [1907] 7 Terr. L.R. 465, 6 W.L.R. 108.

THE LIABILITY UNDER THIS SECTION IS NOT CONFINED TO LIABILITY FOR ACCIDENTS.

The liability extends to damage to property or business: Noble v. Turtle Mountain (1905), 15 Man. L.R. 514; Cummings v. Dundas (1907), 13 O.L.R. 384, (1907) 9 O.W.R. 624; Strang v. Arran (1913), 28 O.L.R. 106, 12 D.L.R. 41.

In a recent case of Dick v. Vaughan, (1917), 12 O.W.N. 65 a Divisional Court has held that the owner of a traction engine was not entitled to recover damages for the loss he had sustained through not being able to drive his engine over a highway bridge owing to its being out of repair; the view of the Court being that the damage which the plaintiff had sustained was too remote and was not different in kind from that which all of His Majesty's subjects suffered, and Arran v. Strang (supra) was distinguished on the ground that in that case the access to the plaintiff's property was affected by the want of repair.

"Kept in repair."—The duty of keeping in repair requires that the highway or bridge be kept in such a condition as to be reasonably safe for the purposes of travel, including travel by means of such vehicles as are ordinarily in use. This obligation, which extends equally to a highway or bridge in a newly surveyed and organized township and to a crowded street in the business part of a city, is satisfied by keeping the highway or bridge in such a state as is reasonably safe and sufficient for the requirements of the public, and, in determining whether a corporation is in default, regard must be had to the means at the command of the council and the nature of the ordinary traffic of the locality. A corporation performs this "duty when the travelled way is without obstruction or structural defects which endanger the safety of travellers and is sufficiently level and smooth, guarded by railings where necessary, to enable persons, by the exercise of ordinary care, to travel with safety and convenience": Dillon on Municipal Corporations, 5th ed., sec. 1694. Although this statement is made with reference to the statutory enactments in force in the New England States, it applies also to the enactment contained in this section.

The duty imposed by subs. 1 applies only to roads which have been formally opened and used, and not to those which a corporation, in its discretion, has considered it inadvisable to open: Hislop v. McGillivray (1890), 17 S.C.R. 479; Taylor v. Gage (1913), 30 O.L.R. 75, 86, 16 D.L.R. 686.

A municipal corporation is under no obligation to repair the approaches from the highway to private property constructed by the owner of the property: Hopkins v. Owen Sound (1895), 27 O.R. 43.

A mandatory order requiring the performance of a general duty to repair will not be granted: Hislop v. McGillivray (1886), 12 O.R. 749, (1888) 15 A.R. 687, 17 S.C.R. 479; Hubert v. Yarmouth (1889), 18 O.R. 458; Attorney-General v. Staffordshire L.R. (1905), 1 Ch. 336, 21 T.L.R. 139; Cummings v. Dundas (1907), 13 O.L.R. 384, 395-6.

The law in Quebec appears to be different: Goulette v. Sherbrooke (1904), Q.R. 25 S.C. 387, noted under "Actions by and Against Municipal Corporations," Part XVII.

In Reg. v. London (1900), 32 O.R. 326, it was held that proceedings against a municipal corporation for neglecting to repair and keep in repair one of its streets, thereby committing a common nuisance, should be by indictment, and prohibition was granted to restrain a preliminary investigation of the charge before a police magistrate.

Since this case was decided, provision (s. 2 (13)) has been made in the Criminal Code which has been held to have the effect of enabling the prosecution of a corporation to be initiated in the same way as a prosecution of an individual: In re Scholfield and Toronto (1913), 5 O.W.N. 109, 14 D.L.R. 232, 22 Can. Cr. Cas. 93, 50 C.L.J. 30, 25 O.W.R. 331.

The trustees of a police village not created a body corporate under s. 529 are not a corporation separate from the corporation of the township in which the police village is situate, and the township corporation is liable under s. 460 (1) for default in keeping in repair the highways within the limits of the village, although the want of repair is in respect of a sidewalk constructed by the trustees of the police village: Smith v. Bertie (1913), 28 O.L.R. 330, 12 D.L.R. 623.

The following cases bear upon the same question:—

ENGLAND.

Attorney-General v. Great Northern Railway Company, L.R. (1916), 2 A.C. 356, in which the question was as to whether it was the duty of a railway company which was under a statutory obligation to maintain a bridge to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which might reasonably be expected to pass over it according to the standard of the present day, and it was held that the railway company was not so bound.

The Lord Chancellor (Lord Buckmaster) said:—"I have avoided expressing any opinion upon the question as to how far traffic of an unusually heavy character placed for the first time upon a road constitutes a lawful user of the highway. Traffic may well be of such a nature that its presence would constitute a nuisance, and the use of the highway thereby would be unlawful. But, apart from this, there may be unusually heavy traffic which, originally extraordinary traffic, upon a particular road becomes ordinary owing to the changed circumstances of the district through which the road runs": p. 366.

Earl Loreburn said that he expressed no opinion upon the point: p. 368.

Viscount Haldane said it "was not seriously questioned, in the argument for the respondents, that the body which is charged with the duty of maintaining a highway has to maintain it in a condition which will enable it to carry the ordinary traffic on that highway in whatever form that ordinary traffic may develop": p. 371.

Lord Sumner said that "in the course of the argument a good deal was contended for as to the duties of road authorities in regard to new traffic over a bridge forming part of a highway to which I should not be disposed to assent without further consideration": p. 381.

ONTARIO.

Davis v. Usborne (1916), 36 O.L.R. 148, 28 D.L.R. 397, in which it was held that the defendants' duty to keep a highway in repair was not fulfilled by providing a road reasonably safe for the purposes of travel upon it before the advent of motor vehicles, that it might be that it would have been unreasonable to require a corporation at once after motor vehicles came into use to make its roads, otherwise sufficient, safe for travel under the changed conditions, but that, having regard to the fact that motor vehicles had been in use for several years and were a common means of transportation in general use throughout the province, the statutory duty imposed upon the defendants required them to make the road in question reasonably safe for the purposes of travel and so safe from any additional danger incident to the use of it by motor vehicles.

See also Indiana Springs Company v. Brown (1905), 74 N.E.R. 615-6, in which the same view was expressed.

BRITISH COLUMBIA.

The owner of a motor car which is not registered and licensed is not entitled to recover damages for injuries sustained owing to a highway being out of repair due to misfeasance, as an unlawful use was being made of the highway: Greig v. Merritt (1913), 24 W.L.R. 328.

MANITOBA.

A municipal corporation was held liable for damages caused by a traction engine breaking through rotten timbers in the approach to a bridge on its highway where, to the knowledge of the officials of the corporation, the engine had been passing over the bridge for the previous two years, and no attempt had been made to stop such traffic or to warn those in charge of the engine of any danger: Curle v. Brandon (1905), 15 Man. L.R. 122, 1 W.L.R. 176, affirming (1904), 24 C.L.T. Occ. N. 279.

NEW BRUNSWICK.

In Portland v. Griffiths (1885), 11 S.C.R. 333, which reversed (1884), 23 N.B. 559, Ritchie, C.J., and Fournier, J., expressed the opinion that a municipal corporation owed no duty, as to keeping in repair the highway, to a woman standing on a sidewalk and engaged in cleaning windows, but in Ricketts v. Markdale (1899), 31 O.R. 180, 616, that view was not entertained by a Divisional Court, and the corporation was held liable for injuries to a child playing upon a highway, the Court being of opinion that a municipal corporation is liable for damages, occasioned by its negligence, to children playing upon a highway where there is no general law limiting this liability in that regard and no local law prohibiting their playing on the highway, and when their presence is not prejudicial to the ordinary uses of the street for traffic and passage.

See also, as to what is a reasonable user of a lane, McLean v. Crown Tailoring Company (1913), 29 O.L.R. 455, 15 D.L.R. 353, in which it was held that using it for unhitching horses was a reasonable use.

QUEBEC.

In Deguise v. Notre Dame des Laurentides (1916), Q.R. 50 S.C. 31, it was held that the existing laws oblige municipal corporations only to make roads for the means of transport existing at the time of the adoption of those laws. If the municipal roads are built and maintained according to these laws, the fact that the municipal authorities have not appropriated them to the use of automobiles and have not provided against the dangers inherent to that new mode of locomotion cannot be attributed to them as a fault. A municipal corporation is not answerable for an automobile accident happening in one of its roads, otherwise in perfect order, because of the fact that the road turns there at a right-angle at the summit of a little hill.

A HIGHWAY IS OPEN TO ALL SUITABLE AND PROPER USES.

Dillon on Municipal Corporations, 5th ed., s. 1165.

"The removal of a building along a highway is a legitimate use of the highway not requiring, in the absence of an ordinance or by-law, the assent or permission of the municipal authorities: Ib. s. 715.

This latter statement was referred to with approval by Hagarty, C.J.O., in Toronto Street Railway Company v. Dollery (1886), 12 A.R. 679, 682, where he said, "The moving of a house along public streets may not be designated as an unlawful user of the highway. . . . It is only, I presume, a question of degree between a frame building and a huge van of merchandise, beams of timber, etc."

An engine constructed so as to be able to move itself and draw its tender, containing fuel and water for its own use, may lawfully use the highways: Pattison v. Wainfleet (1902), 1 O.W.R. 407.

This must be read subject to the provisions of The Traction Engines Act, R.S.O. c. 212.

See also notes to "kept in repair" under heading "The following cases bear upon the same question."

OBSTRUCTIONS ON HIGHWAYS.

Where there is an obstacle to the safe user of the highway on or near to it, though placed there by a wrongdoer, if the corporation has notice, express or implied, of its existence and does not remove it or cause it to be removed, the highway is not within the meaning of this subsection kept in repair and the corporation is liable for the damages sustained by any person by reason of its default.

It was held in an early case—Maxwell v. Clarke (1879), 4 A.R. 460—that there could be no recovery where the injury was caused by a horse, which was being ridden on a highway, having taken fright at a pile of wood that had been thrown down a declivity on the side of the road and some of which lay on the bed of the road, and without coming into contact with the wood having, in consequence of the fright, shied and thrown his rider off and injured him.

The view of the Court was that where the object does not block the way of travellers, or even if it obstructs part of the statutory highway, is yet permissible in the locality, its being on the highway does not render the road out of repair.

In O'Neill v. Windham (1897), 24 A.R. 341, which was the case of a horse being driven along a highway taking fright at ties which had been piled on the untravelled part of the highway by a man whose waggon, on which they were, broke down, the Court followed Maxwell v. Clarke. Osler, J.A. (p. 350), after stating what was the effect of the decision in that case, said that "the decision . . . would have been different had the plaintiff suffered in consequence of having come into actual collision with the wood, thus showing that the way had been actually obstructed and damage sustained by reason thereof," and, while he agreed that the case should be followed, said that it was not necessary to say whether he agreed with the decision.

Macdonald v. Yarmouth (1897-8), 29 O.R. 259, was a somewhat similar case, but the tiles which caused the horse to take fright had been piled on the side of the highway by the defendant corporation for the purpose of being used in repairing a culvert. There was a fill of about fourteen feet, with railings on each side, and the tiles were piled in a slight hollow behind the railing, and some boards had been thrown over them and a board which had been nailed between the two boards which formed the railing, so as to further hide the tiles from view. The decision was that this did not constitute evidence of negligence on the defendant's part so as to render it liable to the plaintiff.

In Rice v. Whitby (1898), 25 A.R. 191, which was also a case of a horse taking fright at an obstacle in the highway—a house that was being moved along it—although Maxwell v. Clarke was referred to and as, in that case, there was no impact, it is somewhat singular that the case was not disposed of on that ground, but on the ground that it was not shown that sufficient notice of the obstruction had been given to the corporation nor had a sufficient time elapsed to impose liability upon it.

Colquhoun v. Fullerton (1913), 28 O.L.R. 102, 11 D.L.R. 469, is the last reported case, and in it the Court appears to have followed Maxwell v. Clarke. It was the case of a horse taking fright at a milk stand on the side of the highway, and the plaintiff's action might well have been dismissed on another ground, which it was held was fatal, viz., that notice to the defendant corporation that the milk stand was there was not proved. While Riddell, J., was of opinion that Maxwell v. Clarke and O'Neil v. Windham were binding on the Court, he said that he was "not satisfied with the reasoning or result" of them: p. 105.

The decision in Maxwell v. Clarke and the reasoning on which it is based are unsatisfactory and lead to anomalous results. If, as was said by Osler, J.A., in O'Neil v. Windham, the corporation would have been liable had there been contact with the wood, it must be because there was default in keeping in repair the highway, and it would seem to follow, if that be the case, that the result should be the same although there was no contact, for *ex hypothesi* the highway was out of repair, and the injury was sustained owing to the want of repair.

It is probable that if and when Maxwell v. Clarke comes to be considered by a Court which is not bound by it, the more reasonable rule which Mr. Justice Dillon deduces from the authorities will be adopted, viz.:—

"For an object in a public street calculated to frighten horses ordinarily gentle, and which causes an accident resulting in an injury, municipal corporations have been held liable, if they have been guilty of negligence in allowing it to remain for an unreasonable time. The decisions to this effect generally rest upon statutory provisions and involve a construction thereof. But such objects may come within the notion of a public nuisance, which it is the duty of the municipality to remove as incident to its duty to keep its streets in a safe condition, for failure to discharge which it may be liable to any one specially injured thereby. Where there is a defect or object in a street which is calculated to frighten horses and an injury occurs by reason thereof without the fault of the driver, the corporation, if it has been negligent in respect thereof, is liable; but objects outside the travelled way, and not near enough to the line of public travel to interfere with or incommode travellers, are not defects in the highway. It is not requisite, as we have already seen, that a highway, in its whole width as located, should be fitted for travel. It is sufficient if it be of suitable width, and in good condition for the needs of the public": Dillon on Municipal Corporations, 5th ed., s. 1702.

See also Macfarlane v. Colam (1908), Court of Sessions Cas. 56, 45 Sc. L.R. 47; McIntyre v. Coote (1909), 19 O.L.R. 9.

The unreasonableness of holding the corporation liable where a horse takes fright at objects on or near the highway such as are mentioned by Patterson, J.A., in Maxwell v. Clarke and in the American cases to which he referred, and as were referred to by Hagarty, C.J., in Rounds v. Stratford (1876), 26 U.C.C.P. 11, must be admitted, but it is clear that in many of the cases referred to by way of illustration it would be held that the risk of a horse taking fright was one of those risks which Blackburn, J., in Rylands v. Fletcher (1866), L.R. 1 Exch. 265, 286, spoke of as inevitable to which persons going upon a highway are subject and the consequences of which they must suffer.

It may be difficult to decide on which side of the line a particular case falls, but the question being one of fact must be determined by the application of sound common sense to the facts in evidence.

The reported cases on subsection 1 are very numerous.

The following is a list of Ontario cases, not exhaustive, but containing the most important and the latest of them. The list does not include those mentioned (*infra*) in dealing with liability for obstructions, or those mentioned (*infra*) when dealing with cases under subsection 3. In this list the cases in which the plaintiff failed are prefixed by a star:—

*Ray v. Petrolia (1874), 24 U.C.C.P. 73 (defect in sidewalk).

Toms v. Whitby (1874), 35 U.C.R. 195, (1875) 37 U.C.R. 100 (no barrier on embankment).

Sherwood v. Hamilton (1875), 37 U.C.R. 410 (defective barrier on hill).

Boyle v. Dundas (1876), 27 U.C.C.P. 129 (defective sidewalk).

Lucas v. Moore (1878), 43 U.C.R. 334, (1879) 3 A.R. 602 (unguarded ditch in highway).

Walton v. York (1879), 30 U.C.C.P. 217, (1881) 6 A.R. 181 (unguarded ditch).

*Bleakley v. Prescott (1886), 12 A.R. 637, reversing (1885) 7 O.R. 261 (injury sustained in crossing from one side to the other of a sidewalk over an accumulation of hard-beaten snow where there was a slight declivity in the sidewalk).

*Goldsmith v. London (1889), 16 S.C.R. 231 (abrupt rise from crossing to sidewalk).

Johnson v. Nelson (1890), 17 A.R. 16 (absence of guard rail or other protection on the approach to a bridge.

Durochie v. Cornwall (1893), 23 O.R. 355, (1894) 21 A.R. 279, (1895) 24 S.C.R. 301 (depression in sidewalk in which water lodged and ice gathered.

Badams v. Toronto (1896), 24 A.R. 8 (non-repair of a sidewalk extending beyond the line of the street over adjoining private property so as ostensibly to form part of the highway).

Foley v. Flamborough (1899), 26 A.R. 43 (large stump at the edge of the travelled way).

Madill v. Caledon (1901-2), 3 O.L.R. 66, 555 (injuries sustained owing to a sidewalk on a highway, built by voluntary subscriptions and statute labour, although the corporation never assumed any control over it nor was the statute labour expended with the knowledge of the corporation, being out of repair where the corporation had knowledge of the existence of the sidewalk and there was opportunity and time to repair it).

Luton v. Yarmouth (1902), 1 O.W.R. 40 (washout and other defects in highway).

Summers v. York (1902), 1 O.W.R. 137 (want of guard).

Pattison v. Wainfleet (1902), 1 O.W.R. 407 (unsound bridge).

*Belling v. Hamilton (1902), 3 O.L.R. 318 (hole in pavement, injury by foot-passenger while crossing).

McGarr v. Prescott (1902), 4 O.L.R. 280 (hole in sidewalk).

Johnston v. Point Edward (1903), 2 O.W.R. 687 (failure to warn of removal of bridge).

*Rogers v. Petrolia (1903), 2 O.W.R. 709 (improper bridge over ditch).

Dickson v. Haldimand (1903), 2 O.W.R. 969, (1904) 3 O.W.R. 52 (want of guard).

Garner v. Stamford (1903), 7 O.L.R. 50 (stone in footpath).

McInnes v. Egremont (1903), 5 O.L.R. 713 (want of guard to bridge).

*Evans v. Huntsville (1904), 3 O.W.R. 108 (defective sidewalk).

Galloway v. Sarnia (1904), 3 O.W.R. 361, 5 O.W.R. 458 (defective sidewalk).

Boyle v. Guelph (1904), 3 O.W.R. 322, 4 O.W.R. 220 (open ditch).

Cochrane v. Hamilton (1904), 3 O.W.R. 739 (no provision for getting rid of overflow from gully and water freezing).

Holland v. York (1904), 7 O.L.R. 533 (highway covered with water).

*Anderson v. Toronto (1904), 4 O.W.R. 485 (defective sidewalk).

*O'Connor v. Hamilton (1904), 8 O.L.R. 391, (1905) 10 O.L.R. 529 (caving in of sewer).

Thomas v. North Norwich (1905), 6 O.W.R. 13, reversing (1904) 4 O.W.R. 517 (not sufficient warning of bridge having been removed).

*McNiroy v. Bracebridge (1905), 10 O.L.R. 360 (defective sidewalk).

Dodds v. Aurora (1905), 6 O.W.R. 510 (defective street-crossing).

*McKay v. Port Dover (1905), 6 O.W.R. 878, (1906) 7 O.W.R. 292, 758 (defect in sidewalk).

Plant v. Normanby (1905), 10 O.L.R. 16 (want of guard).

*Turner v. Eustis (1906), 7 O.W.R. 238 (alleged defective highway).

*Armstrong v. Euphemia (1906), 7 O.W.R. 552 (defective highway).

Campbell v. Brooke (1906), 8 O.W.R. 292 (want of guard).

Hobin v. Ottawa (1906), 8 O.W.R. 589, reversing (1906), 8 O.W.R. 101 (defect in sidewalk).

Morrison v. Toronto (1906), 7 O.W.R. 547, 607, 12 O.L.R. 333 (open space in sidewalk).

Kew v. London (1907), 9 O.W.R. 224 (defective sidewalk).

*Prue v. Brockville (1907), 10 O.W.R. 359 (danger from electric current).

*Burns v. Toronto (1907), 10 O.W.R. 723 (opening not guarded).

*Breault v. Lindsay (1907), 10 O.W.R. 890 (defect in sidewalk).

Pow v. West Oxford (1908), 11 O.W.R. 115, 13 O.W.R. 162 (defective roadway).

Gallagher v. Lennox & Addington (1908), 13 O.W.R. 227 (pitch-holes and ridges).

*Anderson v. Toronto (1908), 15 O.L.R. 643 (sunken granolithic block in sidewalk).

Sangster v. Goderich (1909), 13 O.W.R. 419 (hole in roadway).

*Bouttete v. Tilbury North (1910), 1 O.W.N. 623 (non-repair of highway).

*Stillwell v. Houghton (1910), 2 O.W.N. 185 (township road too narrow and ditch not guarded).

*Innis v. Havelock (1910), 2 O.W.N. 205, 17 O.W.R. 310, (1911) 2 O.W.N. 871, 18 O.W.R. 508 (defect in sidewalk).

Jackson v. Toronto (1910), 2 O.W.N. 461 (sidewalk slightly raised at crossing).

Young v. Bruce (1911), 24 O.L.R. 546, 20 O.W.R. 87 (unguarded embankments).

Kelly v. Carrick (1911), 2 O.W.N. 1429, 19 O.W.R. 796 (ditch not guarded).

*Brown v. Toronto (1911), 2 O.W.N. 982, 18 O.W.R. 996, (1911) 3 O.W.N. 84 (surface of boulevard below curb).

*Armstrong v. Barrie (1912), 4 O.W.N. 64, 6 D.L.R. 851, 23 O.W.R. 243 (hole in highway).

Strang v. Arran (1913), 28 O.L.R. 106, 12 D.L.R. 41 (failure to replace bridge).

Barclay v. Ancaster (1913), 4 O.W.N. 764, 10 D.L.R. 363, 24 O.W.R. 60 (absence of guard).

Armstrong v. Peel (1913), 4 O.W.N. 1031, 10 D.L.R. 169, 49 C.L.J. 336, 24 O.W.R. 372 (defective bridge).

Patterson v. Aldborough (1913), 4 O.W.N. 1346, 11 D.L.R. 437, 24 O.W.R. 638 (excavation not guarded).

Roach v. Port Colborne (1913), 29 O.L.R. 69, 13 D.L.R. 646 (defect in sidewalk).

*Egan v. Saltfleet (1913), 29 O.L.R. 116, 13 D.L.R. 884, 49 C.L.J. 698 (hole in the road).

Glynn v. Niagara Falls (1913), 29 O.L.R. 517, 15 D.L.R. 426, (1914) 31 O.L.R. 1, 16 D.L.R. 866 (electric shock from pole in street).

Connor v. Brant (1913-4), 31 O.L.R. 274 (hole in highway).

*Miller v. Wentworth (1913), 5 O.W.N. 317, 25 O.W.R. 270, (1914) 5 O.W.N. 891 (insufficient guard-rail).

Ackersviller v. Perth (1914), 32 O.L.R. 423, (1915) 33 O.L.R. 598, 22 D.L.R. 666 (unguarded ditch).

Kinsman v. Mersea (1914), 6 O.W.N. 597, 7 O.W.N. 101 (unguarded ditch).

Robinson v. Dereham (1915), 8 O.W.N. 173, 23 D.L.R. 321 (absence of guard rail).

Bradish v. London (1915), 9 O.W.N. 296, (1916) 10 O.W.N. 161 (defect in highway).

Huth v. Windsor (1915), 34 O.L.R. 245, 542, 24 D.L.R. 875 (defect in sidewalk).

Poulin v. Ottawa (1916), 9 O.W.N. 454 (steam roller left on highway).

*Wallace v. Windsor (1916), 36 O.L.R. 62, 28 D.L.R. 655 (defect in sidewalk).

McKinnon v. Wellington (1916), 9 O.W.N. 486 (ridges of ice and dirt in roadway).

Davis v. Usborne (1916), 36 O.L.R. 148, 28 D.L.R. 397 (unguarded ditch).

Cranston v. Oakville (1916), 10 O.W.N. 175, 315 (pitch-hole on highway).

Tremblay v. Peterborough (1916), 11 O.W.R. 62 (injury caused by tripping upon a cap of a water cut-off pipe set in the sidewalk and projecting above it about three-quarters of an inch).

*Ellis v. Toronto (1917), 12 O.W.N. 128.

OTHER PROVINCE CASES.

Alberta.

Lusk v. Calgary and Wheatley v. Calgary (1915), 22 D.L.R. 50, (1916) 28 D.L.R. 392, 33 W.L.R. 935, 10 W.W.R. 37 (injury caused by a horse taking fright and falling over an embankment where there was no railing along the side of the road, which was narrow at the point where the accident occurred).

BRITISH COLUMBIA.

Smith v. Vancouver (1897), 5 B.C.R. 491 (constructing a sidewalk and street crossing in such a manner that the crossing is of less width than the sidewalk and considerably lower, constitutes misfeasance, and the corporation is liable to a pedestrian, walking at night on the sidewalk, with reasonable care, who stepped over the outer edge of the crossing and was thereby injured).

MANITOBA.

Taylor v. Winnipeg (1898), 12 Man. L.R. 479 (falling on ice formed near public wells, of which there were a large number).

Kennedy v. Portage La Prairie (1899), 12 Man. L.R. 634 (pitch holes in a winter road).

Taylor v. Portage La Prairie (1906), 4 W.L.R. 404 (injury caused by a contractor leaving the highway in bad repair and dangerous condition while constructing sewerage and water works for the corporation).

*Forrest v. Winnipeg (1909), 18 Man. L.R. 440, 10 W.L.R. 307 (injury caused by stepping on the end of a loose plank in a comparatively new sidewalk, where the plank had been loose for two or three weeks before the accident, but there was no evidence that any of the city servants or officials had knowledge of it, and many persons, including the inspector of sidewalks in the employ of the city, had walked over it without noticing that there was any defect there).

QUEBEC.

*Legault v. Cote St. Paul (1896), Q.R. 12 S.C. 479 (injury caused by a horse taking fright at a small tree lying on one side of a road, which had been dropped there from a waggon on the previous day, and no evidence that the corporation had knowledge, prior to the accident, that the tree was on the road)

Prevost v. Montreal (1898), Q.R. 15 S.C. 39 (where a municipal corporation permits a railway company to place rails upon a public street upon which there is much traffic, and the rails, which are on sleepers, are raised above the level of the street eight or nine inches and end abruptly without any guard or protection at the extremity of the line, and in winter the rails are not in use and are covered over with snow, the corporation is liable for an injury to a person who, not knowing of the presence of the rails, drives his waggon against them at the end, and cannot escape liability by claiming that the recourse should be against the railway company).

Rousseau v. St. Nicholas (1898), Q.R. 15 S.C. 214 (where there is on a front winter road a single track of about three feet wide and the fences are left standing on both sides of the road, which is curved, and no meeting place has been provided for, as required by law, the corporation is liable for injuries caused to a person who, when meeting a sleigh on the road, was obliged to put his horse into the deep snow, and the horse, in plunging in it, was injured).

*Brunet v. St. Joachim de la Pointe Claire (1898), Q.R. 14 S.C. 278 (injury occurring on a road within the limits of the municipality which is under the control of a turnpike company).

Gaffney v. Montreal (1899), Q.R. 16 S.C. 260 (injury due to a sidewalk being in a bad and dangerous condition where that condition had existed for a period sufficient to allow the municipal authorities to put it in a safe and proper state).

Wong Ling v. Montreal (1913), Q.R. 44 S.C. 339, 10 D.L.R. 558 (injury caused by want of repair of a part of a street used as a crossing place, though not a continuation of a sidewalk).

Spedding v. Montreal (1915), Q.R. 47 S.C. 493, 23 D.L.R. 681 (injury to a pedestrian caused by falling into manhole in a highway, the cover of which had been removed and improperly replaced by persons unknown).

Maltais v. Pointe au Pic (1915), Q.R. 48 S.C. 87 (injury to a horse caused by stepping on *debris* consisting of rusty rails and other waste from the demolition of a sidewalk, deposited by the corporation in the course of repairing a highway).

*Coaticook v. Laroche (1915), Q.R. 24 K.B. 339 (injury caused by the fall of an unsound branch of a tree situate upon a slope at the edge of a sidewalk).

Villani v. Montreal (1916), 29 D.L.R. 321 (the verdict of a jury finding a municipal corporation guilty of negligence in allowing a flagstone in a sidewalk to protrude three-quarters of an inch higher than the others was upheld).

SASKATCHEWAN.

Hutson v. Regina (1913), 6 S.L.R. 126, 14 D.L.R. 372, 25 W.L.R. 628, 5 W.W.R. 395 (injury caused by a broken grating in a sidewalk).

QUEBEC CASES MORE FULLY NOTED.

It is not necessary, to fix responsibility on a municipal corporation for injuries caused by a defective sidewalk, that it should be notified of its defective condition, nor can the corporation escape liability because it was caused by an infraction by a third party of its by-laws, and it is not liable for failure to carry such by-laws into operation: Beech v. Montreal (1897), Q.R. 13 S.C. 187.

Although municipal corporations are bound to maintain the roads under their control in the condition required by law and are responsible for all damages resulting from failure to perform this obligation, Courts are not disposed to apply literally the provisions of the law and to hold that a corporation must at all times, regardless of the season of the year and of special circumstances, keep and maintain the roads under their control in perfect condition, but the spirit of the law must be observed.

Where a road is repaired in May or June, and a hole which caused an accident was allowed to form in the course of the summer and to increase in size until under the effect of the fall rains it had reached proportions which made it dangerous, this is evidence of negligence, and the corporation will be held responsible.

Duclos v. Ely (1898), 5 Rev. de Jur. 177.

A winter road, open to the general public, over which a large number of persons are accustomed to pass and on which there is nothing to indicate that it is private, is a public road, and the corporation of the municipality in which it is situate is liable for accidents happening owing to neglect to keep it in repair: Duchene v. Beauport (1903), Q.R. 23 S.C. 80.

Corporations of rural municipalities are liable in damages for injuries sustained by reason of the want of repair of roads used by the mere permission of the owners of lands. Such roads have the character of municipal roads under the provisions of art. 749 of the Municipal Code (art. 464 of the new Code): Lalonge dit Gascon v. St. Vincent de Paul (1905), Q.R. 27 S.C. 218.

*The owner of a house in a municipality whose by-laws require him to maintain the street and sidewalk opposite to it in a specified manner is liable in damages for injury to a passer-by caused by the defective condition of the street or sidewalk. When the by-law states what means are to be used to obviate danger to passers-by, it is not sufficient to conform with its letter. It is necessary, in addition, to employ the usual means for safety, *e.g.*, if there is glare ice, to cover it with salt, ashes, sawdust or other proper material: Vidal v. The John D. Ivey Company (1912), Q.R. 42 S.C. 509.

Notwithstanding the provisions of art. 849 of the Municipal Code, where a municipal corporation lays out a winter road over a river at a place where the ice is too thin and an accident results therefrom, the corporation is liable in damages for the accident: Morency v. L'Ange-Gardien (1913), Q.R. 43 S.C. 537.

Art. 849 provided that "corporations are not liable for accidents or damages occasioned by the breaking of the ice on roads laid out and maintained by them on rivers or other pieces of water."

In Bedard v. Beaulieu (1916), 32 D.L.R. 250, it was held that the corporation was not liable for injuries caused by the breaking of the ice on a road laid out and maintained by it on the River St. Lawrence and art. 849 was referred to.

This article does not appear in the new Code.

THE CASES AS TO THE LIABILITY OF THE CORPORATION FOR NON-REPAIR CAUSED BY OBSTRUCTIONS, EXCAVATIONS, OPENINGS OR OTHER THINGS ON OR NEAR THE HIGHWAY RENDERING IT UNSAFE FOR PUBLIC TRAVEL ARE NUMEROUS, AND MAY BE CONVENIENTLY GROUPED UNDER TWO HEADS:—

(1) When placed or made by the corporation or its officers or servants or by its authority:—

Rowe v. Leeds & Grenville (1863), 13 U.C.C.P. 515 (unguarded heaps of gravel for repair left on road).

*Pearson v. York (1877), 41 U.C.R. 378 (unguarded hole and heap in highway).

Cook v. Collingwood (1903), 2 O.W.R. 966 (unguarded trench).

Kirk v. Toronto (1904), 8 O.L.R. 730 (steam roller negligently operated in highway).

Biggar v. Crowland (1906), 13 O.L.R. 164 (stake planted in highway).

Keech v. Smith's Falls (1907), 15 O.L.R. 300 (heaps of dirt raked up by street cleaners).

Reid v. Toronto (1910), 1 O.W.N. 450, 699 (scantling and boards on sidewalk).

Bateman v. Middlesex (1911), 24 O.L.R. 84, 25 O.L.R. 137, 6 D.L.R. 533, 535, (1912) 27 O.L.R. 122 (unlighted barricade across highway).

Breen v. Toronto (1911), 2 O.W.N. 690 (scoria blocks on footpath).

O'Neil v. London (1911), 3 O.W.N. 345 (weigh scales on highway).

Weston v. Middlesex (1913), 30 O.L.R. 21, 16 D.L.R. 325, (1914) 31 O.L.R. 148, 19 D.L.R. 646 (gravel heaps on highway).

McIntosh v. Simcoe (1914), 5 O.W.N. 793 (object calculated to frighten horses).

Poulin v. Ottawa (1916), 9 O.W.N. 454 (steam roller left on highway).

OTHER PROVINCE CASES.

BRITISH COLUMBIA.

Macpherson v. Vancouver (1909), 14 B.C.R. 326, 11 W.L.R. 501, affirmed (1912), 17 B.C.R. 264, 2 D.L.R. 283, 20 W.L.R. 926, 1 W.W.R. 1114 (injury caused by stepping on a wooden grating in a sidewalk which, when put in, was structurally defective, and was put in by the owner of abutting property by the permission of the corporation).

In this case it was held by Morrison, J., that it was a case of misfeasance but that, if it was not, s. 219 of the Vancouver Incorporation Act, as amended in 1909, imposed upon the corporation liability for non-repair. The Court of Appeal treated the case as one of misfeasance and said nothing as to the effect of the Act.

Tait v. New Westminster (1911), 18 W.L.R. 470 (injury caused by a section of a water-main pipe lying for many months upon a street in a city, and projecting a foot at least into the macadamized and travelled portion of it at an acute angle, so that it was difficult to see it).

Skewis v. Kamloops (1911), 19 W.L.R. 612, 1 W.W.R. 241 (falling into a manhole placed in a highway by the corporation in the exercise of its power to instal and maintain water works, the manhole being structurally defective).

New Brunswick.

Glidden v. Woodstock (1895), 33 N.B. 388 (hydrant with two posts around it against which a person after night-fall struck and was injured—there was no light and the street was narrow and irregular and no line of demarcation between the street and the sidewalks).

Nova Scotia.

*Messenger v. Bridgetown (1900), 33 N.S. 291-2, (1901) 31 S.C.R. 379 (injuries sustained owing to a horse having stumbled while passing at night over a mound of earth 8 inches in height, which had been left in the highway after filling up a trench which had been dug for the purpose of laying a pipe across the highway).

McDonald v. Sydney (1912), 46 N.S. 436, 8 D.L.R. 99, 12 E.L.R. 163 (falling into a trench left open in the highway by servants of the corporation).

Saskatchewan.

*Williams v. North Battleford (1911), 4 S.L.R. 75, 16 W.L.R. 301, reversing (1910) 14 W.L.R. 684 (a sidewalk in a not thickly populated municipality, constructed across a street and raised about twelve inches above a ditch on one side so as to constitute an obstruction on that side of the street where there was ample room to pass in the centre of the road without going on the obstructed portion).

(2) When placed or made by others than the corporation, its servants or agents, or by its authority:—

*Vespra v. Cook (1876), 26 U.C.C.P. 182 (lumber on highway).

*Castor v. Uxbridge (1876), 39 U.C.R. 113 (telegraph poles lying on highway and encroaching on travelled part)—the plaintiff failed because of contributory negligence.

*Maxwell v. Clarke (1879), 4 A.R. 460 (wood on highway, but not encroaching on travelled part).

*Howard v. St. Thomas (1889-1890), 19 O.R. 719 (house being moved on highway).

Howarth v. McGugan (1892), 23 O.R. 396 (pile driver and iron hammer left on highway by contractor)—new trial ordered.

*O'Neil v. Windham (1897), 24 A.R. 341 (milk stand on highway).

*Ewing v. Toronto (1898), 29 O.R. 197 (defect in sidewalk).

*Rice v. Whitby (1898), 25 A.R. 191 (house being moved on highway).

Homewood v. Hamilton (1901), 1 O.L.R. 266 (open and unguarded area under sidewalk).

*Minns v. Omemee (1901), 2 O.L.R. 579, (1902) 8 O.L.R. 508 (trap door in sidewalk left open and unguarded).

Gaby v. Toronto (1902), 1 O.W.R. 440 (unguarded hole dug by contractor).

McIntyre v. Lindsay (1902), 4 O.L.R. 448 (unguarded trench dug by gas company).

*Hemphill v. Haldimand (1904), 3 O.W.R. 605, (1904) 4 O.W.R. 163 (stones unlawfully placed on highway). (The plaintiff failed in this case because it was not shown that the accident was caused by the stones being on the highway.)

Holland v. York (1904), 7 O.L.R. 533 (materials placed on highway).

Vassar v. Brown (1904), 3 O.W.R. 6, 4 O.W.R. 490 (excavation in highway).

Labombarde v. Chatham (1905), 10 O.L.R. 446 (loose live electric wire)—the plaintiff succeeded as to the Chatham Gas Company.

Kelly v. Whitchurch (1905), 11 O.L.R. 155, (1906) 12 O.L.R. 84 (logs on highway).

Gignec v. Toronto (1906), 11 O.L.R. 611 (planks on sidewalk).

*Gloster v. Toronto Electric Light Company (1906), 12 O.L.R. 413, 38 S.C.R. 27 (improperly insulated electric wire close to bridge)—the plaintiff succeeded as to the electric light company.

*Everett v. Raleigh (1910), 21 O.L.R. 91 (uncovered iron pipe of gas company in highway).

*Howse v. Southwold (1912), 27 O.L.R. 29, 5 D.L.R. 709 (telephone pole in highway).

*Colquhoun v. Fullerton (1913), 28 O.L.R. 102, 11 D.L.R. 469 (milk stand in highway).

OTHER PROVINCE CASES.

MANITOBA.

Mitchell v. Winnipeg (1907), 17 Man. L.R. 166, 6 W.L.R. 31, 7 W.L.R. 120 (accident caused by leaving a pile of lumber on the highway).

Couch v. Louise (1907), 16 Man. L.R. 656, 5 W.L.R. 482 (where a barbed wire fence had been allowed to remain across part of a highway for more than three months at the season of the year during which road repairs would be naturally made, notice of its existence will be imputed to the municipal corporation whose duty it is to keep the road in repair).

Smiley v. Oakland (1916), 31 D.L.R. 566 (personal injuries sustained while travelling in an automobile on a road which was out of repair owing to a wash-out of the earth covering a culvert which it was the duty of the corporation to keep in repair).

PRINCE EDWARD ISLAND.

It was held in McInnis v. Charlottetown (1897), 33 C.L.J. 297, that the corporation was not liable where a sidewalk was properly constructed, but the owner of abutting land, without the knowledge of the corporation, placed over the space between the sidewalk and the steps of his house a plank which projected four inches on the sidewalk and was an obstruction, and a person passing along the street struck her foot against the projecting plank and was injured.

In the foregoing four lists the cases in which the plaintiff failed are marked with a star.

The provisions of subsection 7 must be taken into consideration when dealing with the liability of a corporation.

LIABILITY WHERE DEFECT ARISES FROM AN ACT OR OMISSION OF AN INDEPENDENT CONTRACTOR.

An "independent contractor" is one who merely undertakes to produce a specified result, employing his own means to produce that result, and is entirely independent of any control or interference by the person with whom he contracts: Halsbury's Laws of England, vol. 1, par. 327.

An authority which employs a contractor to carry out work involving interference with a highway does not thereby absolve itself of its duty towards other persons. Although not responsible for his negligence or that of his servants so long as such negligence is merely "casual" or "collateral," the authority is responsible if the contractor fails to do or to get done what it is its duty to do or to get done, *i.e.*, to take the necessary precautions to protect the public from the danger which its operations entail: Ib. vol. 16, par. 238, and cases there cited.

See also Ballentine v. Ontario Pipe Line Company (1908), 16 O.L.R. 654; Dorst v. Toronto (1908), 11 O.W.R. 738, 12 O.W.R. 261; McIntosh v. Simcoe (1914), 5 O.W.N. 793,4, 15 D.L.R. 731; Dillon on Municipal Corporations, 5th ed., ss. 1722-3.

A company which had furnished the blocks to a contractor employed by a corporation to lay a block pavement in a street, and who was under the obligation to keep it in repair, was engaged in making repairs to the pavement. Pitch heated to a high degree was used in the work. It was heated by means of a furnace, which was placed on a nearby street, about three feet from the sidewalk. A workman of the company who had charge of the furnace and the heating of the pitch was not supplied with a proper ladle, but made use of a wooden one for ladling the pitch out of a cauldron into pails. When the ladle got partly filled with pitch, the workman put it into the fire to melt it out, and this practice burned the handle and weakened it. In pulling the ladle out of the fire, the handle broke off, and the ladle was dashed upon a heap of sand and the boiling pitch was splashed on a child who, attracted by what was going on, was standing near the furnace, and his face was burned severely. No precaution was taken to prevent any one from going near the furnace and boiling pitch or to protect children who would be attracted by what was going on. On this statement of facts it was held by Leitch, J., and by a Divisional Court that the corporation was liable for the injuries sustained by the child: Waller v. Sarnia (1912), 4 O.W.N. 403, 890, 8 D.L.R. 629, 9 D.L.R. 834, 23 O.W.R. 831. The ground upon which the decision was based was that "there was a statutory duty on the part of the defendants to keep the street in repair. The defendants themselves could have undertaken the work of repairing the pavement in question, and, if so, would have been under the obligation of taking such precautions in doing it as not to expose the public to danger of injury. The work of heating the pitch and handling it when heated was necessarily dangerous and required care and precaution. Under such circumstances a duty was cast upon the defendants, the responsibility for which they could not escape by delegating it to an independent contractor." It was also held that what had occurred was not of a casual and collateral character, but was something necessary to be done in furtherance of the work of repair.

This case is very near the line, and it may be open to question whether it was rightly decided. While the heating of the pitch was necessary for the purpose of the work, it was not necessary that it should be heated and handled in the manner in, or at the place at, which it was heated and handled, and it would seem that the negligence of the contractor was merely casual or collateral. The result reached was probably right for another reason than that on which the decision was based. What was done in boiling and handling the pitch was done on the highway and was a nuisance for which the defendants were responsible if, as no doubt was the case, they had knowledge of what was being done and permitted it to be done.

In Quebec a municipal corporation is not liable for the acts of a contractor, but is guilty of negligence and is liable for injuries caused by the condition of a highway if it leaves it open for traffic while a contractor is doing work on it if he produces a condition of danger, *e.g.*, by making an excavation in it: Scott v. Quebec (1913), Q.R. 44 S.C. 184.

LIABILITY FOR INJURIES SUSTAINED BY THE BREAKING DOWN OF A BRIDGE WHEN A TRACTION ENGINE IS BEING TAKEN OVER IT.

See The Traction Engines Act, R.S.O. c. 212.

It was held in Goodison v. McNab (1909), 19 O.L.R. 188, (1910) 44 S.C.R. 187, that where planking to protect the bridge as required by this statute is not laid down, the corporation is not liable.

In Linstead v. Whitchurch (1915), 35 O.L.R. 1, 27 D.L.R. 770, affirmed (1916), 36 O.L.R. 462, 30 D.L.R. 431, where the collapse of the bridge was not directly due to the failure to comply with the requirements of the statute, the defendant was held to be liable.

Goodison v. McNab, 44 S.C.R. 187, was followed in Marion v. Montcalm (1915), 34 W.L.R. 683 (Man.).

OVERHANGING BRANCHES OF TREES AND FALLING TREES.

Where the overhanging branches of a tree extend over the line of travel so as to interfere with the reasonable use of the highway, the highway is out of repair.

Ferguson v. Southwold (1895), 27 O.R. 66, in which Embler v. Wallkill (1890), 57 Hun (N.Y.) 384, was approved, and it was laid down that anything which exists or is allowed to remain above a highway interfering with its ordinary and reasonable use constitutes want of repair and a breach of duty on the part of the municipal corporation having jurisdiction over the highway.

It had been said before by Hagarty, C.J., in Gilchrist v. Carden (1876), 26 U.C.C.P. 1, 5, 6: "I incline to think that the law which imposes the liability to keep in repair requires the municipality to guard in certain cases against overhanging trees likely to fall upon the road which might naturally imperil the passers-by."

LIABILITY WHERE THE DISREPAIR IS DUE TO CLIMATIC CONDITIONS.

The leading case upon the question of the liability of a municipal corporation to answer in damages for injuries occasioned by defects of this kind in a highway under the control of its council is Caswell v. St. Marys (1869), 28 U.C.R. 247, 254, and the observations of the late Sir Adam Wilson (then a Justice of the Court of Queen's Bench) have been accepted in subsequent cases as a correct statement of the law. He there said: "It must be a question of fact altogether for the jury to say whether the place alleged to have been out of order was dangerous, and, if so, from what cause, and, if from a natural cause or process, whether the persons liable to repair the road could reasonably and conveniently, as regarded expenditure and labour, have made it safe for use. If the obstruction or danger could properly and reasonably have been removed, then the persons on whom the burden lay to keep the road in order should be held to the fulfilment of their duty to make it safe and useful for the public, at whatever season of the year or from whatever cause the impediment or difficulty may have happened."

See also Organ v. Toronto (1893), 24 O.R. 318; Durochie v. Cornwall (1893), 23 O.R. 355, 359, (1894) 21 A.R. 279, 282, (1895) 24 S.C.R. 301, 303; Hogg v. Brooke (1904), 7 O.L.R. 273, 284; Wallace v. Ottawa and Gloucester Road Company (1905), 6 O.W.R. 652; Huth v. Windsor (1915), 34 O.L.R.

245, 250, 24 D.L.R. 875; McKinnon v. Wellington (1916), 9 O.W.N. 486; Cranston v. Oakville (1916), 10 O.W.N. 175, 315.

ENGLISH AND OTHER PROVINCE CASES.

England.

Where a tramway company is under a statutory obligation to "at all times maintain and keep in good condition" so much of the road on which the tramway is laid as lies between the rails and eighteen inches beyond on either side, the company is not bound to remove the snow unless the fall is of such a depth as to render the road impassable. The fact that the removal of the snow will render the passage over the road more convenient is not enough to bring the case within the meaning of the statute: Acton v. London United Tramways, L.R. (1909) 1 K.B. 68.

Where the snow has fallen to such a depth as to create a distinct obstruction to the traffic, the duty of repairing the road includes the duty of removing the snow: Amesbury v. Wilts, L.R. (1883) 10 Q.B.D. 480.

Manitoba.

The mere allowance of the formation and continuance of obstructions or dangerous spots in a highway due to accumulation of snow may amount to non-repair for which the corporation would be liable, but in every such case the question to be determined is whether, taking all the circumstances into consideration, it is reasonable to hold that the corporation should have removed the danger: Taylor v. Winnipeg (1898), 12 Man. L.R. 479.

Nova Scotia.

Where a highway was in bad repair owing to the snow being thrown from the sidewalks into the roadway, causing deep pitch holes, and this condition was aggravated owing to severe storms during the winter, the municipal corporation was held liable for injuries caused by the condition of the highway. It was held that the statutes of Nova Scotia imposed upon the corporation the duty of repairing the streets and liability if the duty was not performed to an action by a person who has suffered any particular injury owing to the neglect to perform the duty: Halifax v. Walker (1885), Cameron's S.C. Cas. 569, affirming (1883), 16 N.S. 371.

In stating his opinion, Strong, J., answering the argument that the duty to repair does not include keeping the streets in good order during the winter season, when the nature of the climate renders this impossible, said:—"I see no reason why the streets which have to be used for traffic whilst the snow is on the ground, as well as at other times, should not be kept in a reasonable state of repair in the winter season as well as at other times. The question of what is reasonable repair is one for the jury, and this includes the removal of snow as well as other obstructions."

The plaintiff, who was the proprietor of an omnibus line plying in certain streets in the municipality under a license, recovered damages for the loss sustained by the wrecking of his carriages, the straining of his horses, the breaking of harness, etc., as well as loss of profits through the diminution of traffic on his omnibus lines.

Quebec.

When the bad condition of a street is the result of climatic conditions that the municipal corporation cannot reasonably control, it is not responsible for damages resulting from that condition, especially if the injury could have been avoided by ordinary prudence: Sherbrooke v. Short (1887), 15 Rev. L. 283.

The fall of an unusual quantity of snow does not constitute *force majeure* if it is allowed to remain on a leading thoroughfare for five or six days and no path is cleared on the sidewalk: Leclerc v. Montreal (1898), Q.R. 15 S.C. 205.

A municipal corporation in Quebec is not obliged to remove the snow from a narrow street, its removal being impracticable, and the occurrence of slopes from the centre of the street to the sidewalk being a necessary consequence to the non-removal of the snow and climatic conditions, the corporation is not liable for an injury caused by falling on a crossing under these conditions: Bonin v. Montreal (1899), Q.R. 15 S.C. 492.

To render a municipal corporation responsible for the bad state of a sidewalk, it is necessary that it should have continued sufficiently long for the presumption to arise that the corporation knew of it, especially when it is the case of a sidewalk usually well maintained and of ice having formed in a short time by reason of a sudden frost: Gunlack v. Montreal (1900), Q.R. 17 S.C. 294.

A municipal corporation is bound to keep roads at all times in good order and can be relieved only by proof of *force majeure*. Young v. Stanstead (1902), Q.R. 21 S.C. 148.

This was the case of the blocking of road owing to a severe snowstorm where no steps had been taken to break up or clear the road.

The obligation imposed on municipal corporations to keep the streets and roads in condition suitable for traffic may be affected by climatic conditions, and implies a respective reciprocal obligation on the part of the public to use them with care. Therefore a carter who, in full daylight, drives a heavy cart down a hill which he sees is covered with ice, and who, when the cart has begun to slip. adds to the impetus by an improper direction to the horse, is alone responsible for the accident which results therefrom, and has no recourse against the corporation: Gougeon v. Montreal (1908), Q.R. 34 S.C. 324.

RUNAWAY HORSES.

Where two causes combine to produce the injury both in their nature proximate, the one being the defect in the highway and the other some occurrence for which neither party is responsible, the corporation is liable provided the injury would not have been sustained but for the defect in the highway, and, therefore, where the accident of a horse running away beyond control and the defect in the highway combine to produce the injury, the corporation is liable if the injury would not have been sustained but for the defect in the highway: Sherwood v. Hamilton (1875), 37 U.C.R. 410.

Price v. Cataraqui Bridge Company (1874), 35 U.C.R. 314, and Steinhoff v. Kent (1887), 14 A.R. 12, which may seem to be opposed to this statement of the law, are distinguishable on the ground mentioned by Osler, J.A., in the latter case that the plaintiff could not "complain of the absence of a guard, because at the time of the accident he was not making use of the road in the ordinary way, and that the defendants were only bound 'to provide against the ordinary contingencies of travel,' within which the running away of the horse under the circumstances proved did not come": p. 18.

These cases may also be distinguished on the ground that it did not follow that if the draw of the bridge had been guarded, the accident would have been prevented.

See also Thomas v. North Norwich (1905), 9 O.L.R. 666, and Little v. Smith (1914), 32 O.L.R. 518, 20 D.L.R. 399, where the cases bearing on this question are discussed and the rule laid down in Sherwood v. Hamilton (supra) was approved.

In Bell Telephone Company v. Chatham (1900), 31 S.C.R. 61, it was held that a person driving on a public highway, who sustains injury to person and property by the carriage coming in contact with a telephone pole lawfully placed there, cannot maintain an action for damages if it clearly appears that his horses were running away and that their violent, uncontrollable speed was the proximate cause of the accident.

"Default."

"The ground of the action is either positive misfeasance on the part of the corporation, its officers or servants, or by others under its authority in doing acts which cause the streets to be out of repair, in which case no other notice to the corporation of the condition of the street is essential to its liability, or the ground of the action is the neglect of the corporation to put the streets in repair or to remove obstructions therefrom, or to remedy causes of danger occasioned by the wrongful acts of others, in which cases notice of the condition of the street or what is equivalent to notice is necessary . . . to give the person injured a right of action against the corporation:" Dillon on Corporations, 5th ed., s. 1712.

The "equivalent to notice" referred to is notice of "facts from which notice . . . may reasonably be inferred or proof of circumstances from which it appears that the defect ought to have been known and remedied by it": Ib. s. 1717.

This is the view as to the liability of a corporation under The Municipal Acts which has been uniformly adopted by the Courts of Ontario, and when actions were tried with a jury, the instructions to the jury were always given in accordance with it.

However, in the recent case of Vancouver v. Cummings (1912), 46 S.C.R. 457, 2 D.L.R. 253, 22 W.L.R. 164, 2 W.W.R. 66, a different view was expressed by Idington, J. After referring to cases where "the forces of nature have suddenly destroyed or put out of repair a road or some one has maliciously or negligently wrought the same result," he went on to say:—"I am, despite *dicta* to the contrary, prepared to hold that, unless in some such case as I have suggested, the question of notice or knowledge does not arise, and that in all cases where the accident has arisen from the mere wearing out or apparent wearing out or imperfect repair of the road there arises upon evidence of accident caused thereby a presumption without evidence of notice that the duty relative to repair has been neglected."

Although if a rule were to be laid down for the first time, such a construction of the statute as this learned Judge adopts would appear to be sounder than that which has prevailed in Ontario, when so careful and experienced Judges as the late Mr. Justice Ferguson and Osler, J.A., as well as other members of the Court of Appeal, treated it as not open to question that in the class of case to which Idington, J., referred it was necessary, in order to establish liability, to prove notice to the corporation or facts from which notice was to be presumed or implied, and the late Mr. Justice Maclennan was of opinion that the plaintiff should fail because notice had not been proved (McGarr v. Prescott (1902), 4 O.L.R. 280), it would not be prudent for a plaintiff's counsel to depart from the well-settled and uniform practice of the Ontario Courts.

See also McNiroy v. Bracebridge (1905), 10 O.L.R. 360; Kew v. London (1907), 9 O.W.R. 224; Rushton v. Galley (1910), 21 O.L.R. 135.

Knowledge by the person injured of the defect.

Knowledge by the person injured of the defective condition of the highway does not necessarily disentitle him to recover. He had the right to use it, and the question is whether, under the circumstances, he exercised such care as a prudent person would reasonably exercise in using it, knowing its condition: Gordon v. Belleville (1887), 15 O.R. 26; Galloway v. Sarnia (1904), 3 O.W.R. 361, (1905) 5 O.W.R. 458; Kew v. London (1907), 9 O.W.R. 224; Roach v. Colborne (1913), 29 O.L.R. 69, 13 D.L.R. 646. See also Copeland v. Blenheim (1885), 9 O.R. 19.

But a corporation is not liable to a person familiar with the locality and having the knowledge that there is close at hand a safe passage-way across a plainly visible shallow trench lawfully and necessarily in the street at the time (in this case in connection with the laying of the ties of a street railway) who is injured while endeavouring to cross the trench in broad daylight: Keachie v. Toronto (1895), 22 A.R. 371, followed in Atkin v. Hamilton (1897), 24 A.R. 389, though it had been distinguished in the Court below as reported in (1896) 28 O.R. 229, where the case is reported as Aikin v. Hamilton.

See also Belleisle v. Hawkesbury (1904), 8 O.L.R. 694, where the plaintiff, who was injured in jumping, in daylight, from a cart on to the completed portion of a sidewalk, which was then to his knowledge in course of construction and unfinished, failed to recover; and Burns v. Toronto (1907), 10 O.W.R. 723.

Gordon v. Belleville (supra) was followed in Touhey v. Medicine Hat (1912), 7 D.L.R. 759, 2 W.W.R. 715, (1913) 5 A.L.R. 116, 10 D.L.R. 691, 23 W.L.R. 880, 4 W.W.R. 176, but a different view was taken in Gunlack v. Montreal (1900), Q.R. 17 S.C. 294, in which it was held that a person who sees before him a sidewalk covered with glare ice, and does not turn aside for fear of losing time, has no recourse against the corporation if he falls when passing over it.

Forgetfulness of a known danger.

Mere forgetfulness of a known danger does not disentitle the person injured to recover: Peart v. Grand Trunk Railway Company (1884), 10 A.R. 191; Copeland v. Blenheim (1885), 9 O.R. 19; Scriver v. Lowe (1900), 32 O.R. 290; Keech v. Smith's Falls (1907), 15 O.L.R. 300.

Where non-repair is not the proximate cause of the injury.

It has been held that where a highway is out of repair, but the proximate cause of the injury is the negligence of a railway company, the company and not the corporation is liable: Marsh v. Hamilton (1903), 2 O.W.R. 480, (1904) 3 O.W.R. 525;

Liability where highway destroyed.

Where by the forces of nature a highway is so destroyed that it is impracticable to form a permanent and passable road along the old track at a reasonable expense and it is impossible in a commercial sense to repair it—that it "would cost more than the subject-matter of repair is reasonably worth"—the body upon which the duty to repair rests is relieved from that duty.

This is in accordance with the statement of the law made by Blackburn, J., in Reg. v. Greenhow, L.R. (1876) 1 Q.B.D. 703, 708.

This question was considered by a Divisional Court in Cummings v. Dundas (1907), 13 O.L.R. 384, and the law was thus stated by the Chief Justice:—"Such physical injury to a highway as deprives its former owner of any title to it and of the right to repair it, whether the injury be called destruction or not, must necessarily relieve such owner of the obligation to repair; but when, as in the case of Regina v. Greenhow (supra), the question is free from the element of change of ownership, then it becomes a question of fact whether the injury does or does not amount to destruction."

See also Rex v. Landulph (1834), 1 Moo. & R. 393; Reg. v. St. Paul (1840), 2 Moo. & R. 307; Reg. v. Bamber (1843), 5 Q.B. 279; Reg. v. Hornsea (1854), Dears C.C. 291, 302; McCormick v. Pelée (1890), 20 O.R. 288.

PENALTY UNDER THE QUEBEC CODE.

The action for the penalty and that for damages mentioned in art. 793 of the Quebec Municipal Code (art. 453 of the new Code) are independent actions, and the fact that a plaintiff has sued for the penalty for the default in repairing a highway is no bar to an action for damages for the same default: Pageau v. St. Ambroise (1908), 10 Que. P.R. 208.

NECESSITY FOR BY-LAW.

See notes to s. 249 (1).

Limitation of actions.

(2) No action shall be brought against a corporation for the recovery of damages occasioned by such default, whether the want of repair was the result of nonfeasance or misfeasance, after the expiration of three months from the time when the damages were sustained.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

ALBERTA.

The corresponding provision to subsections 2, 4 and 5 of the Alberta Village Act is s. 74, which enacts that:—

"No action shall be brought under the provisions of the next preceding section except within six months from the date upon which the cause of action arose and unless notice in writing of the accident shall have been mailed to or served upon the secretary-treasurer of the village within one month after the date upon which the cause of action arose.

"Provided that in case of the death of the person injured or if the Court or Judge before whom the action is tried considers that there is a reasonable excuse for the want or insufficiency of such notice and that the defendants have not thereby been prejudiced in their defence, the want of notice required under this section shall be no bar to the maintenance of this action."

The corresponding provision to subsections 2, 4 and 5 of the Alberta Town Act is s. 350 (2), which is similar to s. 74 of the Village Act.

The corresponding provision to subsections 2, 4 and 5 of the Rural Municipality Act is s. 220, which is similar to s. 74 of the Village Act.

MANITOBA.

The corresponding provision to subsections 2 and 4 in Manitoba is s. 627, R.S. 1913. c. 133, which enacts that:—"Subject to the provisions of the next succeeding section, no action shall be brought to enforce a claim for damages under either of the two preceding sections unless notice in writing of the accident and the cause thereof has been served upon or mailed to the clerk or mayor (or reeve) of the municipality within seven days after the happening of the accident in a case coming within section 626, and within one month after the happening of the accident in any other case, and in no case unless the action be commenced within three months after the receiving of such notice."

SASKATCHEWAN.

The corresponding provision of the Saskatchewan City Act is s. 512, which enacts that:—"No action shall be brought against a corporation for the recovery of damages occasioned by default in its duty of repair as mentioned in section 510, whether the want of repair was the result of non-feasance or misfeasance, after the expiration of three months from the time when the damages were sustained," and the corresponding provision of the Saskatchewan Town Act is the same (s. 495).

The provision of the Saskatchewan Village Act which corresponds with subsections 2 and 4 is s. 168, which enacts that:—"No action shall be brought under the provisions of the next preceding section except within six months from the date upon which the cause of action arose and unless notice of such action shall have been given to the secretary-treasurer of the village within one month after the date upon which such damage was caused."

The provision of the Saskatchewan Rural Municipality Act which corresponds with sub. sections 2 and 4 is s. 221, which is similar to s. 168 of the Village Act.

CASES UNDER THE CORRESPONDING PROVISION OF THE QUEBEC CODE.

No action for damages or for a penalty based on failure to keep municipal roads in repair can be brought against a municipal corporation before fifteen days' previous notice in writing has been given to the secretary-treasurer, and an action brought without such notice will be dismissed: Belanger v. Boucherville (1910), 11 Que. P.R. 361.

See art. 453 of the new Municipal Code.

If a landowner is under a direct liability to a person injured owing to neglect to keep sidewalks adjacent to his property on the public street in repair or free from snow or ice, as required by a municipal by-law, the neglect of that duty is at the most only a *quasi-delit* of omission on the part of the municipal corporation and the landowner jointly and severally, and the latter may set up the same defence as would be available to the corporation, including the prescriptive limitation by which action against a municipal corporation must be taken within six months after the accident: Batsford v. Laurentian Paper Company (1912), Q.R. 41 S.C. 367, 5 D.L.R. 306, 18 Rev. de Jur. 70.

An action to recover damages from a municipal corporation governed by The Cities and Towns Act, R.S.Q. 5864, will be dismissed on exception to the form, if the notice of suit previously given did not contain the particulars of the plaintiff's claim, or state the place of his residence: Potter v. St. Lambert (1916), 17 Que. P.R. 295.

"Whether the want of repair was the result of non-feasance or misfeasance."

These words were introduced by 3 and 4 Geo. V. c. 43, and have effected an important change in the law. Before this amendment, it had been settled by decision that the subsection did not apply where the condition of the highway was caused by the corporation's misfeasance. In deciding what was misfeasance and what non-feasance, some very fine distinctions were drawn, and it was often difficult to say within which class a particular case fell. As an illustration of the fine distinctions that were drawn, two cases may be referred to—Rowe v. Leeds and Grenville (1863), 13 U.C.C.P. 515, and Pearson v. York (1877), 41 U.C.R. 378. In the former the defendants, for the purpose of repairing their road, placed on the side of it heaps of earth, stones and gravel, and took no precautions to prevent persons passing along the road from running against them, and the plaintiff's waggon ran against one of them and was broken, and for the damages thus sustained he brought the action, and it was held that what he complained of was misfeasance and that the limitation provision did not apply. In the other case, the defendants made a hole in the road in order to ascertain whether repairs were required there, but did not replace the materials or fill up the hole or place there any light or means to warn persons using the road, and the plaintiff, while crossing the road, in the evening, struck his foot on some of the materials taken out of the roadbed and fell and was injured. He did not bring his action within three months, and it was held that his claim was barred.

See also Keech v. Smith's Falls (1907), 15 O.L.R. 300, where some of the cases illustrating the distinction are referred to.

The change in the law does not affect cases in which the action was begun before the change came into effect: Glynn v. Niagara Falls (1913), 29 O.L.R. 517, 15 D.L.R. 426, (1914) 31 O.L.R. 1, 16 D.L.R. 866.

This subsection does not apply to actions for negligence in operating a street railway, but the limitation section of The Railway Act applies: Reid v. Sault Ste. Marie (1916), 10 O.W.N. 283.

As the distinction between misfeasance and non-feasance obtains in other provinces, it seems desirable that reference to some of the cases illustrating the distinction should be made.

The leading English cases are:—

Bathurst v. Macpherson, L.R. (1879) 4 A.C. 256; Pictou v. Geldert, L.R. (1893) A.C. 524, 9 T.L.R. 638; Sydney v. Bourke, L.R. (1895) A.C. 433, 11 T.L.R. 403; Bull v. Shoreditch (1901), 18 T.L.R. 171, (1902) 19 T.L.R. 64, (1904) 20 T.L.R. 254; Maguire v. Liverpool, L.R. (1905) 1 K.B. 767, 781, 21 T.L.R. 278; and the following Ontario cases may also be referred to:—

Dickson v. Haldimand (1902), 2 O.W.R. 969; Kirk v. Toronto (1903), 7 O.L.R. 36; Clemens v. Berlin (1904), 7 O.L.R. 33; Read v. Toronto (1904), 4 O.W.R. 310; Armour v. Peterborough (1905), 10 O.L.R. 306; Burns v. Toronto (1906), 13 O.L.R. 109; Biggar v. Crowland (1906), 13 O.L.R. 164; Brown v. Toronto (1910), 21 O.L.R. 230; James v. Toronto (1912), 3 O.W.N. 1007; in addition to the cases noted elsewhere under this subsection.

COMPUTATION OF THE TIMES MENTIONED IN THE SECTION.

The three months mentioned in subsection 2 are calendar months (R.S.O. c. 1, s. 29, cl. (u), and are to be computed from the day on which the injury was met with, though the extent of it cannot be estimated until afterwards. (Miller v. North Fredericksburgh (1865), 25 U.C.R. 31), and exclusive of that day, but inclusive of the last day of the three months—for instance, if the injury occurred on the 5th January, the action must be commenced on or before the 5th April following.

The law of Quebec appears to be the same: Quebec v. Howe (1887), 13 Q.L.R. 315; Hunter v. Montreal (1889) 12 Leg. News 187; Featherston v. Lachine (1895), Q.R. 9 S.C. 37.

The days mentioned in subsection 4 are to be computed without excluding Sundays or other holidays, and are exclusive of the day on which the injury occurred, but inclusive of the last of the thirty days or of the seven days (as the case may be).

Where the last day of the three months or of the days mentioned in subsection 4 falls on a Sunday or a holiday, the last day is the day next following which is not a Sunday or other holiday: R.S.O. c. 1, s. 28, cl. (h); Ellis v. Toronto (1916), 10 O.W.N. 146.

When the period prescribed is a calendar month running from any arbitrary date and not coinciding with any particular month in the calendar the period cannot exceed in length the number of days in the month in which it starts, and where the second of the two months in which the period falls is a month containing fewer days than those contained in the first month, the number of days in the period may be less than that of those in the first month. Such a period can never extend into a third month: Halsbury's Laws of England, vol. 27, par. 867.

A similar rule is applicable where the period is more than one calendar month. If, therefore, the period is three months and the injury occurred on the 29th or 30th of November, they would end on the last day of February, whether it happened to be the 28th or, as in leap year, the 29th.

Where a corporation is added as a defendant after the commencement of the action, the commencement of the action *qua* the corporation is when it is made a defendant: Burrows v. Grand Trunk Railway Company (1915), 34 O.L.R. 142, 23 D.L.R. 173, 18 Can. Ry. Cas. 183.

The limitation in this subsection does not apply to an action to recover damages for injuries sustained owing to the negligence of a municipal corporation in operating its street railway, but the limitation section of The Railway Act applies: Kuusisto v. Port Arthur (1916), 37 O.L.R. 146, 31 D.L.R. 670.

Snow or ice on sidewalks.

(3) Except in case of gross negligence a corporation shall not be liable for a personal injury caused by snow or ice upon a sidewalk.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

MANITOBA.

The corresponding provision to this subsection in Manitoba is s. 626, R.S. 1913, c. 133, which enacts that:—"A municipality shall not be liable for accidents arising from persons falling owing to snow or ice upon the sidewalks, unless in cases of gross negligence on the part of the municipality."

SASKATCHEWAN.

The corresponding provision of the Saskatchewan City Act is s. 511, which enacts that:—"Except in case of negligence a corporation shall not be liable for personal injury caused by snow or ice upon a sidewalk," and the corresponding provision of the Saskatchewan Town Act is the same (s. 494).

"Gross negligence."

This term has been the subject of much unfavourable judicial comment, and is not adopted in Halsbury's Laws of England, vol. 21, par. 628, note (i).

It is impossible to define "gross negligence," but the Legislature, when it adopted the term, intended that, in the cases to which subsection 3 applies, something more should be proved than is necessary to establish a cause of action under subsection 1.

In Drennan v. Kingston (1897), 27 S.C.R. 46, the meaning of the term was considered, and at page 60 Sedgewick, J., says that, as used in this subsection, he would give it the meaning of "very great negligence."

In the same case the trial Judge, in his charge to the jury, which was approved by the Supreme Court (p. 60), thus dealt with the question:—

"If you think that owing to the condition of that crossing—the snow upon the slope, the condition of the snow, if you think it was dangerous—that that danger was a manifest danger to anybody who was caring to look—if that state of things had existed in a central portion of the city where many people were passing—in one of the most frequented parts of the city—if that condition had existed for many days; if the means of preventing that condition of things was simple; if the corporation neglected to discharge the duty of applying that simple remedy—then I think the case would be one of gross negligence. I will ask you, therefore, to say whether you think there was negligence on the part of the corporation or whether you think there was gross negligence": p. 54.

Perhaps what was said in that case and in the cases afterwards referred to may afford a guide as to the application of the subsection.

"Snow or ice upon a sidewalk."—A change in the wording of this subsection as it stood in 3 Edw. VII. c. 19, as s. 606 (2), has been made. That subsection read :—"No municipal corporation shall be liable for accidents arising from persons falling owing to snow or ice upon the sidewalks unless in case of gross negligence by the corporation," and its provisions were first enacted by 57 Vict. c. 50, s. 13, which came into force on 1st September, 1914.

The meaning of the subsection has been considered and it has been applied in several cases. The list which follows is not exhaustive, but contains the principal cases, and those in which the plaintiff failed are marked with a star:—

Drennan v. Kingston (1896), 23 A.R. 406, (1897) 27 S.C.R. 46.
McQuillan v. St. Marys (1899), 31 O.R. 401.
*Ince v. Toronto (1900), 27 A.R. 410, (1901) 31 S.C.R. 323.
*Stevens v. Chatham (1902), 1 O.W.R. 199.
*Mann v. St. Thomas (1902), 1 O.W.R. 480.
*Mahoney v. Ottawa (1904), 3 O.W.R. 695.
Ludgate v. Ottawa (1906), 8 O.W.R. 257, 865.
*Lynn v. Hamilton (1907), 10 O.W.R. 329.
Merritt v. Ottawa (1908), 12 O.W.R. 561.
Bell v. Hamilton (1910), 1 O.W.N. 644, 784.
Joncas v. Ottawa (1910), 1 O.W.N. 737, 2 O.W.N. 168.
Yates v. Windsor (1912), 3 O.W.N. 1513, 3 D.L.R. 891.
*Gauthier v. Caledonia (1914), 7 O.W.N. 171, 19 D.L.R. 879.
Edwards v. North Bay (1915), 8 O.W.N. 119, 22 D.L.R. 744.
*Palmer v. Toronto (1916), 38 O.L.R. 20, 32 D.L.R. 541. Affirmed by Supreme Court of Canada, 1st May, 1917 (not yet reported).
Killeleagh v. Brantford (1916), 38 O.L.R. 35, 32 D.L.R. 457.
*German v. Ottawa (1917), 11 O.W.N. 331, since reversed by a Divisional Court (1917) 12 O.W.N. 64.
*Ellis v. Toronto (1917), 12 O.W.N. 128.

See also Carlisle v. G.T.R. Co. (1912), 25 O.L.R. 372, 1 D.L.R. 130, where the meaning of "gross negligence" is considered and explained.

"Sidewalk."—A street crossing for the purpose of passing from one sidewalk to another is a "sidewalk" within the meaning of subsection 3: Kingston v. Drennan (supra), pp. 59, 60.

Notice of action.

(4) No action shall be brought for the recovery of the damages mentioned in subsection 1 unless notice in writing of the claim and of the injury complained of has been served upon or sent by registered post to the head, or the clerk of the corporation, in the case of a county or township within thirty days, and in the case of an urban municipality within seven days after the happening of the injury, nor unless where the claim is against two or more corporations jointly liable for the repair of the highway or bridge, the prescribed notice was given to each of them within the prescribed time.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

As to Alberta and Manitoba, see notes to subs. 2.

SASKATCHEWAN.

The corresponding provision of the Saskatchewan City Act is s. 513, as amended by Stats. 1916, c. 18, s. 28, which enacts that:—"No action shall be brought for the recovery of such damages unless notice in writing of the claim and of the injury complained of has been served upon or sent by registered post to the mayor or city clerk within thirty days after the happening of the injury," and the corresponding provision of the Saskatchewan Town Act is the same (s. 496).

As to Villages and Rural Municipalities, see notes to subs. 2.

OTHER PROVINCE CASES UNDER PROVISIONS SIMILAR TO SUBS. 4.

MANITOBA.

In Iveson v. Winnipeg (1906), 16 Man. L.R. 352, 4 W.L.R. 53, 5 W.L.R. 118, a notice which stated that an action would be brought to recover for injuries sustained through the omission and default of the corporation to keep in repair a public sidewalk on the east side of Main Street between Polson and Bannerman Avenues, the accident having happened at a point between Polson Avenue and Atlantic Avenue, which is between Polson and Bannerman Avenues, was held to be sufficient.

In Mitchell v. Winnipeg (1907), 17 Man. L.R. 166, 6 W.L.R. 31, 7 W.L.R. 120, a notice delivered to the chairman of the Board of Works, which came to the hands of the clerk in due time, was held to be sufficient.

QUEBEC.

In Pageau v. St. Ambroise (1908), 10 Que. P.R. 208, it was held that, in an action for damages occasioned by default in repairing a highway, it is not necessary to allege that the notice required by art. 793 of the Municipal Code (art. 453 of the new Code) has been given.

A right of action for damages against the corporation of the city of Montreal, being based primarily on the sufficiency of the notice as to the place where the accident occurred according to art. 536 (a) of the charter of that city, a notice stating that the accident occurred on a sidewalk on the corner of two streets, when, in fact, it occurred on the crossing between those two streets, is insufficient: Seybold v. Montreal (1909), 10 Que. P.R. 377.

In Batsford v. Laurentian Paper Company (1912), Q.R. 41 S.C. 367, 5 D.L.R. 306, 18 Rev. de Jur. 70, it was held that the failure to give notice to the clerk of the municipality within sixty days of an injury sustained on a defective sidewalk without an explanation sufficient to justify the Court in permitting the maintenance of the action after that period or the failure to begin action for the injury against the corporation within six months of the date of the accident, as required by art. 5864 of The Cities and Towns Act, R.S.Q. 1909, will bar an action not only against a municipal corporation, but also against a property owner who is answerable to the corporation under subs. 20 of art. 5641 of the same Act for failure to maintain the sidewalk in a safe condition, as required by a by-law of the municipal council, whether the liability created by that subsection renders the property holder liable to the public as well as to the municipal corporation or only gives the right to the municipal corporation to call him in as a warrantor.

In order to entitle a person injured owing to the failure of a municipal corporation to keep a highway in repair to maintain an action for the recovery of damages for the injury, notice of claim containing particulars as to time, place and date must be served on the corporation within a fixed delay from the date of the accident. A notice had been served stating that the injured person had fallen opposite a public building fronting on two streets, the name of one being added after the designation of the building, and after the expiry of the time allowed for serving the notice it was amended by stating that the injured person fell opposite the same building, but on the other street, and it was held that the corporation, not having been prejudiced, could not escape liability by pleading irregularity in the notice, especially as it had obtained full possession of the facts and had proceeded "in warranty for indemnity" against the owners of the building opposite to which the injured person fell.

The statute requiring notice of action against a municipal corporation was not enacted to allow corporations to escape liability on technical grounds, but to enable them by investigation to come into possession of all facts so as either to compromise or properly prepare their defence.

West v. Montreal (1912), 9 D.L.R. 9.

Scott v. Quebec (1913), Q.R. 44 S.C. 184, in which it was held that failure to give notice of action should be invoked by a preliminary plea. Filing a defence to the action is a waiver of want of notice.

In Robertson v. Montreal (1916), Q.R. 50 S.C. 208, 30 D.L.R. 312, it was held that in a notice of action slight variations as to the exact spot where the accident took place are not sufficient to render the notice null if the corporation is sufficiently informed as to the place where the accident happened, that the word "*vis-a-vis*" or "opposite" includes by its natural meaning both sides of a street, and, therefore, a notice which described the place where the accident happened as being opposite ("*vis-a-vis*") 56 Wellington Street, which number was on the south side of the street, and the place where it actually happened was on the north side of the street, and there was no number opposite on the north side of the street, was sufficient.

In the same case it was said by Archibald, J., acting Chief Justice, delivering the judgment of the Court: "The object of giving notice to the city of these accidents is to give the city the opportunity of an early investigation, so that it may be in a position to meet the evidence produced on the part of the plaintiff. It has been held over and over again that slight variations as to the exact spot where the accident happened will not be sufficient to nullify a notice, providing the object of giving the notice is sufficiently accomplished—that is to say, that the city is sufficiently informed as to the place where the accident happened": p. 211.

ONTARIO CASES UNDER SUBS. 4.

The requirement of notice is not limited to the cases mentioned in subsection 3; it is required in all cases to which subsection 1 applies: Aldis v. Chatham (1897), 28 O.R. 525, 527.

The notice is sufficient if it affords reasonable information to enable the council to investigate: Young v. Bruce (1911), 24 O.L.R. 546. It should state the time and place with reasonable particularity so as to identify the occasion: per Street, J., in McInnes v. Egremont (1903), 5 O.L.R. 713, 715. "It is not necessary to state the cause of action, but only that which will enable" the corporation "to have substantial notice of what has occurred, so that" it "may make proper inquiries and may come to trial prepared to meet the plaintiff's case": per Field, J., in Clarkson v. Musgrave (1882), 9 Q.B.D. 386, 390, quoted by Middleton, J., in Young v. Bruce (supra), p. 550.

The notice is sufficient if it is plain and intelligible to an ordinary understanding: Davignon v. Stanbridge Station (1899), Q.R. 14 S.C. 116; Jones

v. Nicholls (1844), 13 M. & W. 361, 153 E.R. 149, referred to by Ritchie, C.J., in St. John v. Christie (1892), 21 S.C.R. 1, 7.

Notices have been held to be sufficient:—

(1) Although the date of the accident was stated to be the 7th when it should have been 8th May, but the place where it occurred was clearly described: McInnes v. Egremont (supra).

(2) Where the place was described as "between Underwood and Port Elgin," the road between those places being 10 miles in length: Young v. Bruce (supra).

(3) Where the notice gave the name of the street, but not the particular side of it: per Boyd, C., in Breault v. Lindsay (1907), 10 O.W.R. 890, 892.

(4) Where the notice was of claim "for smashing plaintiff's automobile by car No. 46 on Cumberland Street North this morning": Kuusisto v. Port Arthur (1916), 37 O.L.R. 146, 31 D.L.R. 670.

(5) Where there was a mistake as to the exact place where the accident happened and the date of it was not given: Killeleagh v. Brantford (1916) 38 O.L.R. 35, 32 D.L.R. 457.

See also Pipher v Whitchurch (1917), 12 O.W.N. 87.

It would be safer, notwithstanding these decisions, to state with accuracy the date when the injury was met with, the place where the accident occurred, giving the name of the road and the place on it described so as to enable the corporation to identify it, and it would be well to add what the defect was.

The following form may be safely used:—

Take notice that on the day of 19 I met with an accident on street in the (*or* on the road allowance between the and concessions of the township of) at (*stating the spot where the accident happened with reference to houses or distances with as much particularity as practicable*) and that the accident was occasioned by (*stating the nature of the defect, e.g., an unguarded ditch, a broken plank in the sidewalk, a hole in the roadway, an obstruction consisting of in the roadway* (*or on the sidewalk*), *etc.*).

Dated 19 .

A. B.

To the Corporation of
the of

If the notice is given by someone else on behalf of the injured person, as it may be, there should be substituted for the word "I" in the form the name of the injured person.

(5) In case of the death of the person injured, failure to give the notice shall not be a bar to the action, and, except where the injury was caused by snow or ice upon a sidewalk, failure to give or insufficiency of the notice shall not be a bar to the action, if the court or Judge before whom the action is tried is of the opinion that there is reasonable excuse for the want or insufficiency of the notice and that the corporation was not thereby prejudiced in its defence. When dispensed with.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

ALBERTA.

See notes to subs. 2.

MANITOBA.

The corresponding provision of the Manitoba Act is s. 628, which enacts that:—"When death results from any such accident as aforesaid, the want of the said notice shall not be a bar to an action, and in all other cases the want or insufficiency of the notice shall not be a bar to an action if the Court or Judge before whom the action is brought considers that there was reasonable excuse for such want or insufficiency, and that the municipality has not thereby been prejudiced in its defence."

SASKATCHEWAN.

The corresponding provision to this subsection of the Saskatchewan City Act is s. 514 (1), which enacts that:—"In case of the death of the person injured, failure to give such notice shall not be a bar to the action; and, except where the injury was caused by snow or ice upon a sidewalk, failure to give or insufficiency of the notice shall not be a bar to the action, if the Court or Judge before whom the action is tried is of opinion that there is reasonable excuse for the want or insufficiency of the notice, and that the corporation was not thereby prejudiced in its defence," and the corresponding provision of The Saskatchewan Town Act is the same, omitting the exception as to injury caused by snow or ice (s. 497).

ONTARIO CASES UNDER SUBS. 5.

REASONABLE EXCUSE FOR THE WANT OR INSUFFICIENCY OF THE NOTICE.

The cases as to what will constitute such an excuse are very unsatisfactory and no principle can be extracted from them.

In the latest reported case, Wallace v. Windsor (1915-16), 36 O.L.R. 62, 28 D.L.R. 655, the Divisional Court was equally divided upon the question. There the notice which should have been given within seven days was not given until nearly a month after the injury was received, and the excuse for the failure to give due notice was that the person injured believed that the injury was only a sprained ankle, and, although she suffered great pain, which she alleged incapacitated her from giving notice, she did not contemplate bringing an action until more than three weeks after, when she consulted a doctor, and, having found that there was a fracture of the fibula and another injury, at once gave the notice. This was held by the trial Judge not to be a reasonable excuse within the meaning of the subsection, and his view was upheld by a Divisional Court upon an equal division, Meredith, C.J.C.P., and Masten, J., being of opinion that it was right and Riddell and Lennox, JJ., being of contrary opinion. Many of the cases under the subsection and under analogous provisions of other statutes were referred to and commented on.

It would appear to be unnecessary to refer to all the cases on the subject. It will suffice to mention the principal ones, and the following is a list of them—in it those in which the reasonable excuse was held not to have been shown are marked with a star:—

Drennan v. Kingston (1896), 23 A.R. 406, (1897) 27 S.C.R. 46.
*Biggart v. Clinton (1903), 2 O.W.R. 1092, (1904) 3 O.W.R. 625.
*O'Connor v. Hamilton (1904), 8 O.L.R. 391, (1905) 10 O.L.R. 529 (though the plaintiff failed on another ground also).
Morrison v. Toronto (1906), 12 O.L.R. 333, 7 O.W.R. 547, 607.
*Anderson v. Toronto (1908), 15 O.L.R. 643.
Young v. Bruce (1911), 24 O.L.R. 546.
*Egan v. Saltfleet (1913), 29 O.L.R. 116, 13 D.L.R. 884.

It must be borne in mind that cases in which the injury was caused by snow or ice upon a sidewalk (subs. 3) are excepted, and that in them, except in case of the death of the person injured, failure to give the prescribed notice is fatal.

The conflict of judicial opinion which has been mentioned affords reason for the suggestion, not now made for the first time, that the requirement of reasonable excuse should be eliminated from the subsection, and that a municipal corporation would be amply protected if all that was required were that it should appear that it was not prejudiced in its defence by the want or insufficiency of the notice. The object of requiring the notice is to enable the corporation to investigate and to be prepared to meet the injured person's case. If the subsection were amended in a case where no notice or an insufficient notice had been given and the corporation was not in possession of the information which the notice is required to give, it would, no doubt, be held that the corporation was thereby prejudiced in its defence. As the subsection stands, it is a pitfall, and has often worked serious injustice, as it undoubtedly does when the corporation has knowledge of the defect and of the injury, but there is no reason beyond that for the failure to give the notice or for the insufficiency of it, because mere knowledge by the corporation of the accident is, standing alone, not enough to excuse the want of the notice: per Osler, J.A., in O'Connor v. Hamilton (1905), 10 O.L.R., at p. 536.

Such a change in the law as is suggested would not be an unreasonable one, not only for the reasons that have been mentioned, but also because the three months' limitation is a departure in ease of corporations from the general law as to the limitation of actions.

To what roads applicable.

(6) This section shall not apply to a road, street or highway laid out or to a bridge built by a private person or by a body corporate until it is established by by-law of the council or otherwise assumed for public use by the corporation.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

ALBERTA.

The corresponding provision of The Alberta Town Act is s. 351, which enacts that:—"The last preceding section shall not apply to any road, street, bridge, alley or square, crossing, sewer, culvert, sidewalk or other work made or laid out by any private person until the same has been established as a public work by by-law or has been assumed for public use by the council."

MANITOBA.

The corresponding provision of the Manitoba Act is s. 630, which enacts that:—"Section 624 shall not apply to any road, street, bridge or highway laid out by any private person; and the municipality shall not be liable to keep in repair any such last mentioned road, street, bridge or highway, until established by by-law or otherwise assumed by public user by such municipality."

SASKATCHEWAN.

The corresponding provision of The Saskatchewan City Act is s. 510 (2), which enacts that:—"This section shall not apply to any road, street, bridge, alley or square, crossing, sewer, culvert, sidewalk or other work made or laid out by a private person until the same has been established as a public work by by-law or otherwise assumed for public use by the corporation," and the corresponding provision of The Saskatchewan Town Act is the same (s. 493 (2)).

ONTARIO CASES.

It was held in Reg. v. Yorkville (1872), 22 U.C.C.P. 431, that the corresponding provision of The Municipal Act of 1866 (s. 399) did not apply so as to relieve the corporation from the duty of keeping in repair a bridge connecting two highways, which was dedicated to the public and in public use for nine or ten years, during which time it had been repaired by and at the expense of the corporation, although no by-law had been passed establishing or assuming it.

The language of the provision then was: "This section shall not apply to any road, street, bridge or highway laid out without the consent of the corporation by by-law until established and assumed by by-law."

See also cases noted under s. 432 ("all roads dedicated by the owner of the land for public use").

OTHER PROVINCE CASES.

ALBERTA.

The obligation of the corporation under s. 158 of the Calgary (Alta.) Charter of keeping in repair highways and bridges "belonging to the city" extends to a bridge forming part of a highway, notwithstanding the statutory obligation of a railway company under The Irrigation Act (R.S.C., c. 61, s. 25) for its safe maintenance and the failure of the corporation to provide the bridge with proper railings renders it liable for injuries sustained by a traveller owing to the absence of such railings: Lusk v. Calgary, and Wheatley v. Calgary (1915), 22 D.L.R. 50, (1916) 28 D.L.R. 392, 33 W.L.R. 935, 10 W.W.R. 37.

QUEBEC.

In order that a street may be considered public so as to render the corporation liable for injuries resulting from the failure to keep it in a safe condition, it is not necessary that it should be indicated on the plan or the registry of the municipality. It is sufficient that it is free for public passage and that the public use it for that purpose: Montreal v. Gamache (1915), Q.R. 24 K.B. 312, 25 D.L.R. 303.

SASKATCHEWAN.

It was held in Jones v. Swift Current (1915), 8 S.L.R. 310, 23 D.L.R. 11, 31 W.L.R. 899, 8 W.W.R. 1100, under a similar provision of The Town Act, R.S. Sask., c. 85, s. 384, that a municipal corporation is not bound to keep in repair a highway laid out by a private person unless it has been assumed by the corporation.

In this case the plaintiff failed to recover because he was driving an unbroken team of horses in contravention of a by-law, and the injuries he sustained by reason of a defect in the highway were met with while so doing.

See also as to other Province Cases, cases noted under s. 432 ("all roads dedicated by the owner of the land for public use").

(7) Nothing in this section shall impose upon a corporation any obligation or liability in respect of any act or omission of any person acting in the exercise of any power or authority conferred upon him by law, and over which the corporation had no control, unless the corporation was a party to the act or omission, or the authority under which suchperson acted was a by-law, resolution or license of its council.

When corporation not responsible for acts of others.

It was held before the enactment by 59 Vict. c. 51, s. 22, of what is now this subsection that a corporation whose duty it was to maintain a highway or bridge was not absolved from its liability to maintain a bridge and its approaches by means of which the highway is carried over a railway although the duty of keeping them in repair is cast upon the railway company: Mead v. Etobicoke (1889), 18 O.R. 438; Fairbanks v. Yarmouth (1897), 24 A.R. 273.

The effect of this subsection is that in such a case the corporation is not liable, except in the circumstances mentioned in the last three lines: Holden v. Yarmouth (1903), 5 O.L.R. 579.

In Carty v. London (1889), 18 O.R. 122, it was held that a municipal corporation was liable for injuries caused by the want of repair of a highway, although it was occasioned by the default of a street railway company, operating its railway under the authority of a by-law of the council, in keeping in repair that part of the highway which was out of repair which it had contracted to keep in repair.

The decision in that case probably would have been the same if the provisions of this subsection had been in force when the plaintiff's injuries were sustained.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

SASKATCHEWAN.

The corresponding provision of the Saskatchewan City Act is s. 510 (4), which enacts that:—"Nothing herein contained shall cast upon the city any obligation or liability in respect of acts done or omitted by persons exercising powers or authorities conferred upon them by law, and over which the city has no control, where the city is not a party to such acts or omissions and where the authority under which such persons proceed is not a by-law, resolution or license of the council," and the corresponding provision of the Saskatchewan Town Act is the same (s. 493 (4)).

(8) A corporation shall not be liable for damages under this section unless the person claiming the damages has suffered by

When corporation not liable for damages.

reason of the default of the corporation a particular loss or damage beyond what is suffered by him in common with all other persons affected by the want of repair.

CORRESPONDING PROVISIONS IN OTHER PROVINCES.

SASKATCHEWAN.

The corresponding provision of The Saskatchewan City Act is s. 510 (3) which enacts that:—"The city shall not be liable for damages under this section unless the person claiming the same has suffered by reason of the default of the corporation a particular loss or damage beyond what is suffered by him in common with all other persons affected by the want of repair," and the corresponding provision of The Saskatchewan Town Act is the same (s. 493 (3)).

ONTARIO CASES.

A landowner who suffers a peculiar and specific injury from an obstruction of a highway which prevents free egress to and regress from his land may, without making the Attorney-General a party, maintain an action against the wrongdoer to have the *locus in quo* declared to be a public highway and to obtain the removal of the obstruction: O'Neil v. Harper (1913), 28 O.L.R. 635, 13 D.L.R. 649.

See also Drake v. Sault Ste. Marie Pulp and Paper Company (1898), 25 A.R. 251; Peake v. Mitchell (1913), 4 O.W.N. 988, 10 D.L.R. 140, 24 O.W.R. 291.

A municipal corporation is liable for damages caused to an owner of abutting land by interruption to his business where the corporation does not exercise reasonable expedition in completing the restoration of a highway after the putting in of a sewer and the damages are occasioned by its failure to do so: Rickey v. Toronto (1914), 30 O.L.R. 523, 19 D.L.R. 146.

Laying the rails of an extension of a street railway on the streets of a municipality under the authority of a municipal by-law without the sanction of the Ontario Railway and Municipal Board having been obtained is unlawful, and an action lies by a person the access to whose house and lot is rendered difficult and who is otherwise inconvenienced in the use of them by such acts to restrain the continuance of them: Mitchell v. Sandwich, Windsor and Amherstburg Railway Company (1914), 32 O.L.R. 594, 611, 22 D.L.R. 531.

See also Strang v. Arran (supra); and Dick v. Vaughan (supra).

OTHER PROVINCE CASES.

British Columbia.

The right of ingress from and egress to a public highway passing a person's land is a private right differing not only in degree but in kind from the right of the public to pass and repass along the highway, and any disturbance of the private right may be enjoined in an action by the landowner: Harvey v. British Columbia Boat and Engine Company (1908), 14 B.C.R. 121, 9 W.L.R. 415.

Quebec.

A municipal corporation has no right to change the natural level of the ground to the injury of an abutting landowner, except for a reason of public utility, and then subject to the obligation of indemnifying him for any loss therefrom: Audet v. Quebec (1896), Q.R. 9 S.C. 340.

A person owning land abutting on a highway, who is deprived of the direct access which he has to it, suffers special damage by the closing and obstruction of the road, and has, in consequence, a right of action in his own name to compel the removal of the obstruction: Meloche v. Davidson (1902), Q.R. 11 K.B. 302, affirming (1901) Q.R. 20 S.C. 26.

A municipal corporation is not liable to pay damages for the decrease in the volume of business of a merchant which he attributes to the fault of the corporation in obstructing the street in which he carried on his business at a distance of more than 1,000 feet from his place of business. The loss in such a case is not the direct or immediate consequence of the action complained of: D'Ambrosio v. Montreal (1914), Q.R. 45 S.C. 282.

A municipal corporation having power to close a bridge forming part of a highway is responsible for the immediate damage caused by the closing of it to an abutting owner, who is entitled to be indemnified for the loss of access and the losses directly resulting from the closing of the road: Bedard v. Lochaber West (1916), Q.R. 49 S.C. 459, 29 D.L.R. 312.

Relief from obligation to rebuild.

(9) Where a bridge which it is the duty of a corporation to repair is destroyed or so damaged that it is necessary to rebuild it the Municipal Board may, upon the application of the corporation, relieve it from the obligation to rebuild the bridge, if the Board is satisfied that it is no longer required for the public convenience or that the re-building of it would entail a larger expenditure than would be reasonable, having regard to the use that would be made of the bridge if it were re-built.

Conditions of granting relief.

(10) The relief may be granted on such terms and conditions as the Board may deem just, and such notice of the application shall be given as the Board may direct.

Costs of pending actions.

(11) The next preceding two subsections shall not affect the costs of any pending action. 3-4 Geo. V. c. 43, s. 460.

EXAMINATION OF PERSONS INJURED.

MANITOBA.

In Manitoba provision is made for the examination before a special examiner of persons injured: s. 629, R.S. 1913, c. 133.

The provision is as follows:—

"The municipality may, at any time after it has received notice of any such claim for damages or become aware that an accident has taken place, and either before or after an action has been begun, examine the claimant or person who met with the accident concerning the accident and the injury complained of and the damages claimed, before a special examiner of the Court of King's Bench or a County Court clerk or a police magistrate, who shall administer the appropriate oath to such claimant or person.

"Provided that if a duly qualified medical practitioner, not being the medical health officer of the municipality, certifies that the person who met with the accident is not in a fit state to be examined owing to personal injuries, he shall not be compelled to be examined.

"(2) The proceedings leading up to such examination and in the conduct thereof shall be, as far as practicable, the same as those prescribed for examination for discovery under 'The King's Bench Act.'"

PHYSICAL EXAMINATION OF PERSONS INJURED.

ONTARIO.

S. 70 of The Judicature Act, R.S.O., c. 56, makes provision for the physical examination by a duly qualified medical practitioner of any person for or in respect of whose bodily injury an action is brought to recover damages or other compensation.

The section is as follows:—

"(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the Court which, or the Judge, or the person who, by consent of parties, or otherwise, has power to fix the amount of such damages or compensation, may order that the person in respect of whose injury damages or compensation are sought shall submit himself to a physical examination by a duly qualified medical practitioner who is not a witness on either side, and may make such order respecting the examination and the costs of it as may be deemed proper.

"(2) The medical practitioner shall be selected by the Court, Judge, or person making the order, and may afterwards be a witness on the trial unless the Court, Judge or person before whom the action or proceeding is tried otherwise directs."

Repair of crossings, etc., made by leave of municipality on toll roads.

461. A corporation shall, in the absence of an agreement to the contrary, keep in repair all crossings, sewers, culverts and approaches, sidewalks and other works made or constructed by it or by any person with the permission of its council, upon any toll road in or passing through the municipality, and in case of default shall be liable, as in the case provided for by section 460. 3-4 Geo. V. c. 43, s. 461.

Apportionment of damages.

462.—(1) Where two or more corporations are jointly liable for keeping in repair a highway or bridge, there shall be contribution between them as to the damages sustained by any person by reason of their default in so doing.

Action to be against all corporations.

(2) Any action by any such person shall be brought against all such corporations, and any of them may require that the proportions in which such damages and the costs of the action are to be borne by them shall be determined in the action.

What to be taken into account.

(3) In settling such proportions, either in the action or otherwise, regard shall be had to the extent to which each corporation was responsible, either primarily or otherwise, for the act or omission by reason of which the damages became payable or are recoverable and the damages and costs shall be apportioned between them accordingly. 3-4 Geo. V. c. 43, s. 462.

A corporation against which an action is brought to recover damages for injury to land caused by drains built by it on a township boundary line is not entitled to have the other township added as a defendant: Donaldson v. Dereham (1906), 7 O.W.R. 617.

Before the enactment of this section it was held that a corporation against which there had been a recovery for non-repair of a highway which it and another corporation were jointly liable to keep in repair was not entitled under what is now s. 464 to a remedy over against the other corporation: Sombra v. Moore (1892), 19 A.R. 144.

Members of council and employees not liable for non-repair of highways.

463.—(1) Where an action may be brought against a corporation by a person who has sustained damages by reason of its default in keeping in repair a highway or bridge, no action shall be brought by him in respect of it or to recover such damages, or any part of them against any member of the council or officer or employee of the corporation personally, but the remedy therefor shall be against the corporation.

Contractors not deemed employees.

(2) A mere contractor with the corporation or an officer or employee who is such contractor, by reason of whose act or omission the damages were caused, shall not be deemed an employee within the meaning of subsection 1. 3-4 Geo. V. c. 43, s. 463.

Before the enactment of this provision Burton, J.A., held this to be the law as respects members of the council. McDonald v. Dickenson (1897), 24 A.R. 31, which was the case of a committee consisting of two members of the council being engaged in an act which was in itself lawful, and he held that they must be regarded only as servants of the corporation, and that the maxim *respondeat superior* applied. Osler, J.A., was of a different opinion.

Remedy over, for damages caused by non-repair against persons causing same.

464.—(1) Where an action is brought to recover damages sustained by reason of any obstruction, excavation or opening in or near a highway or bridge placed, made, left or maintained by any person other than the corporation or a servant or agent of the corporation, or by reason of any negligent or wrongful act or omission of any person other than the corporation or a servant or agent of the corporation, the corporation shall have a remedy over against such other person for, and may enforce payment of the damages and costs which are recovered against the corporation.

In Baines v. Woodstock (1905), 10 O.L.R. 694, 6 O.W.R. 601, it was held that the corporation and the person who causes injury by an obstruction of the highway are not joint wrongdoers.

In Sutton v. Dundas (1908), 17 O.L.R. 556, it was held that a municipal corporation, which is one of two joint wrongdoers against whom judgment has been recovered, is not entitled to indemnity from its co-defendant.

In Gamble v. Vaughan and Markham (1910), 2 O.W.N. 285, where judgment was recovered against the corporation of two townships for personal injuries sustained owing to an explosion of dynamite in a gravel pit near the injured person's house, it was held that the corporation of the township of Vaughan, the negligence of whose contractor caused the explosion, was liable to indemnify the other corporation.

In Macpherson v. Vancouver (1912), 17 B.C.R. 264, 2 D.L.R. 283, 20 W.L.R. 926, 1 W.W.R. 1114, it was held that a property owner does not "leave" or "maintain" an excavation under an adjoining sidewalk within the meaning of sections 149-154 of The Vancouver Incorporation Act (1900) c. 54, so as to render him liable over on a judgment against a municipal corporation for injuries sustained by falling through an old defective grating placed in the sidewalk by the servants or agents of the corporation over an opening therein, notwithstanding that such excavation was for his use and convenience.

It being settled by the jurisprudence that the right to bring an action in warranty on an action for tort (*quasi delit*) fully exists, the corporation has a recourse in warranty against the proprietor opposite whose property an accident occurred owing to failure to provide a meeting place in a narrow road: Rousseau v. St. Nicholas (1898), Q.R. 15 S.C. 214.

In the same case it was held that the road on which the accident occurred being a front road, the primary duty of laying it out rested on the proprietor liable for the work on it, and not on the municipal officers, and the defendant in warranty was, therefore, not exempted from liability by saying that he was not under obligation to construct any meeting place according to law until it had been localized by the municipal officers. Persons liable to perform work required by the provisions of the municipal law are always considered *in mora* to perform such work.

The action in warranty, in case of proceedings for damages through accidents caused by defective sidewalks, etc., given by 62 Vict. c. 58, s. 300 (92), to the city of Montreal, against owners or occupants under obligation to keep them in repair, lies only when there is a default on the part of the latter to conform with the requirements of the statutes and the city by-laws or non-performance of their duty in that respect, therefore an owner or occupant sued in warranty can plead that at the time of the accident the sidewalk in question was in good repair and in the condition prescribed by the statute and by-laws. He is only obliged to intervene and defend the principal action or indemnify the city against which judgment has been given after having

been judicially declared *garant*: Montreal v. Le Cure, etc., de Ste. Agnes de Montreal v. Montreal (1908), Q.R. 18 K.B. 258, 10 Que P.R. 242, affirming (1908) 9 Que. P.R. 383.

The obligation of owners and occupants of property adjoining the public streets of the city of Montreal imposed by 62 Vict. c. 58, s. 300 (92), to guarantee the city against liability for damages in consequence of accidents caused by defects in their sidewalks arising only from the provisions of that Act (art. 1057 C.C.), not from a *delit* or *quasi delit*, the recourse in warranty which it provides does not fall within the terms of art. 421 C.P. so as to give a right to a jury trial: Le Cure, etc., de Ste. Agnes de Montreal v. Montreal (1908), Q.R. 18 K.B. 263.

Where the owner of land situated on a street, public way, etc., established in a municipality is under obligation created by by-law of the municipal council passed under statutory authority to make and maintain a sidewalk in front of his property and is by statute responsible towards the municipal corporation for the damages resulting from his neglect and may be called in warranty by the municipal corporation in all cases brought against it for damages, the owner is not only liable in warranty to the corporation, but also to the public, but can be so only jointly and severally with the corporation, and, therefore, no action for injury to a person resulting from a defective sidewalk can be maintained against him alone: Batsford v. Laurentide Paper Company (1912), Q.R. 41 S.C. 367, 5 D.L.R. 306, 18 Rev. de Jur. 70.

Where a municipal corporation and a power company have been jointly condemned to pay damages to the heirs of a person who is drowned in a river owing to a defective guard rail, the company will be condemned to pay the entire amount so found to the plaintiff in warranty when it is established that the municipal corporation has for years been requesting the company to take proper precautionary measures to insure the safety of the highway and of the banks of the river and the company was under a legal duty in that regard, the neglect of which was the cause of the death: Richelieu v. Montreal and St. Lawrence Light and Power Company (1912), 3 D.L.R. 145.

The following are some of the other cases as to the right to the remedy over. The cases in which there was held to be no remedy over are marked with a star.

ONTARIO.

*Vespra v. Cook (1876), 26 U.C.C.P. 182. (Lumber on highway.) This case was before the enactment of s. 464.

Balzer v. Gosfield South (1889), 17 O.R. 700. (Ditch dug by township corporation in a highway under the jurisdiction of the council of the county.)

Carty v. London (1889), 18 O.R. 122. (Want of repair due to street railway company's acts.)

McKelvin v. London (1892), 22 O.R. 70. (A boulder placed in the highway was the cause of an accident for which the corporation was held liable.)

Organ v. Toronto (1893), 24 O.R. 318. (Non-repair of sidewalk due to ice formed from water discharged from a down pipe of a building, there being default in removing the ice in contravention of a by-law, remedy over claimed as to both the owner and the occupant, but allowed only as to the former.)

In this case Wenzler v. McCotter (1880), 22 Hun. (N.Y.) 60, was followed.

Homewood v. Hamilton (1901), 1 O.L.R. 266. (Insufficiently guarded area in sidewalk left open when in use for bringing in beer.)

Gaby v. Toronto (1902), 1 O.W.R. 440, 606, 635, 711. (Unguarded hole dug by a contractor for the corporation.)

McIntyre v. Lindsay (1902), 4 O.L.R. 448. (Unguarded trench dug by a gas company.)

Holland v. York (1904), 7 O.L.R. 533. (Ashes and cinders spread upon the highway.)

Gignec v. Toronto (1906), 11 O.L.R. 611, 7 O.W.R. 696. (Planks on sidewalk.)

*Toronto v. Peel (1913), 5 O.W.N. 632. (Claim by the corporation of a county to be indemnified for damages paid for injuries sustained owing to the want of repair of a highway assumed by the corporation under The Highway Improvement Act, 2 Geo. V. c. 11.)

*Lambert v. Toronto (1916), 36 O.L.R. 269, 29 D.L.R. 56, affirmed by the Supreme Court of Canada 54 S.C.R 200, 33 D.L.R. 476. (Injury caused by the negligent arrangement of an electric light company's wires.) The remedy over was refused because the finding of the jury was that the injury was due to the negligence of the corporation as well as of the company.

BRITISH COLUMBIA.

Tait v. New Westminster (1911), 18 W.L.R. 470. (Water main pipe on highway.)

MANITOBA.

Taylor v. Portage La Prairie (1906), 4 W.L.R. 404. (Injury caused by a contractor leaving the highway in bad repair and dangerous condition while constructing sewerage and water works for the corporation.)

*Couch v. Louise (1907), 16 Man. L.R. 656, 5 W.L.R. 482. (Barbed wire fence across highway.)

Mitchell v. Winnipeg (1907), 17 Man. L.R. 166, 6 W.L.R. 31, 7 W.L.R. 120. (Pile of lumber on highway.)

SASKATCHEWAN.

Hutson v. Regina (1913), 6 S.L.R. 126, 14 D.L.R. 372, 25 W.L.R. 628, 5 W.W.R. 395. (Grating put in a sidewalk by a property owner and not kept in repair.)

Remedy over in same action.

(2) The corporation shall be entitled to such remedy over in the same action, if the other person is a party to the action, and it is established in the action as against him that the damages were sustained by reason of an obstruction, excavation, or opening so placed, made, left or maintained by him.

Adding party defendant.

(3) The corporation may in such action have the other person, if not already a defendant, added as a party defendant or third party for the purposes of the remedy over; and such person may defend the action as well against the plaintiff's claim as against the claim of the corporation.

In Robertson v. Toronto (1908), 12 O.W.R. 870, 932, it was held that a third party notice will not be set aside upon an allegation by the third party that, under an agreement between it and the corporation, the obligation to keep the streets in repair was assumed by the corporation. That is a matter to be determined in the action.

Where person causing damage has not been made a party.

(4) If such person is not a party defendant, or is not added as a party defendant or third party,or if the corporation has paid the damages before an action is brought to recover the same, or before a recovery thereof in an action against the corporation, the corporation shall have the remedy over, by action against such person, but he shall be deemed to admit the validity of the judgment obtained against the corporation, only where a notice has been served on him, pursuant to Rules of Court, or where he has admitted, or is estopped from denying the validity of such judgment.

When a fresh action is necessary.

(5) Where such notice has not been served, and there has been no such admission or estoppel, and such person has not been made a party defendant or third party to the action against the corporation, or where the damages have been paid without action, or without recovery of judgment against the corporation, the liability of the corporation for such damages, and the fact that the damages were sustained under such circumstances as to entitle the corporation to the remedy over, must be established

in the action against such person to entitle the corporation to recover in the action. 3-4 Geo. V. c. 43, s. 464.

Determination of disputes as to duty to erect and maintain bridge or repair highway.

465.—(1) Whenever there is a dispute between the councils of any two or more corporations as to the corporation on which the obligation to build and maintain or to build or maintain a bridge or to keep in repair a highway rests, the Supreme Court may upon the application of any or either of the corporations determine the matter in dispute on an originating motion; or the Court, if of opinion that the matter in dispute cannot satisfactorily be determined on an originating motion, or that for any other reason it ought not to be so determined, may direct that an action may be brought or that an issue be tried for the purpose of determining the matter in dispute, and the Court may in either case compel by mandamus the performance of the obligation by the corporation upon which it is found to rest.

Disputes as to apportionment of cost of erecting or maintaining.

(2) Except in the cases provided for by section 468, where the dispute is as to the proportions in which the corporations should contribute to the cost of erecting and maintaining or of erecting or maintaining a bridge or of keeping in repair a highway, the matter in dispute shall be determined by arbitration. 3-4 Geo· V. c. 43, s. 465.

Under this section as it stood in 3 Edw. VII. c. 19, as s. 618, a corporation whose duty it was to build and maintain or to maintain a bridge and which failed to keep it in repair might be compelled by mandamus to repair it: per Middleton, J., in In re Pembroke and Renfrew (1910), 21 O.L.R. 366, 373. The expressions which he thought were "not entirely clear" have been eliminated, and as the section now reads the remedy by mandamus is clearly provided for.

Laying out highway where no original allowance.

466.—(1) Where an allowance for road was not reserved in the original survey on a township boundary or part of it, the councils of the townships may establish and lay out a highway on such boundary or part of it.

Passing by-law for.

(2) The councils of any or either of the municipalities may pass a by-law for establishing and laying out such a highway and

for acquiring the land requisite for the one-half of it which lies within the limits of its municipality.

Copy of by-law to be sent to other townships.

(3) The clerk shall within four days after the passing of the by-law transmit by registered post to the clerk of each of the other townships a copy of the by-law certified under his hand and the seal of the corporation to be a true copy.

Arbitration.

(4) If the other council or councils do not within six months after such notice pass a by-law or by-laws in similar terms, the council by which the by-law was passed may require the question of establishing and laying out the proposed highway to be determined by arbitration.

Power of arbitrators.

(5) The arbitrators shall determine whether or not the proposed highway shall be established and laid out, and if they determine that it shall be established and laid out they shall also determine in what proportions the cost of the site of it shall be borne by each of the corporations.

Duties of other townships when arbitrators determine that highway should be laid out.

(6) If it is determined by the arbitrators that the proposed highway shall be established and laid out, the other councils shall forthwith after notice of the award pass the necessary by-laws for establishing and laying out the proposed highway and for acquiring the land requisite for the one-half of it which will lie within the limits of their respective municipalities, and for otherwise carrying out the provisions of the award, and shall proceed with all reasonable despatch to carry into effect the provisions of the by-law.

Effect of determination against laying out highway.

(7) If it is determined by the arbitrators that the proposed highway shall not be established and laid out, no further proceedings shall be taken under this section within two years from the date of the award or within such time not exceeding in all four years, as the arbitrators may by their award determine. 3-4 Geo. V. c. 43, s. 466.

Disputes as to bridges or highway to be settled by arbitration.

467.—(1) Where a highway or bridge is under the joint jurisdiction of the councils of two or more municipalities and they are unable to agree as to any action which one or more of them desire to be taken in the exercise of such joint jurisdiction, any of them may require that the matter in dispute shall be determined by arbitration, and in that case shall prepare a draft by-law for carrying into effect what it is desired shall be done, and serve a copy of it on the clerk of the other municipalities with a notice that it is its desire that such a by-law shall be passed.

Award.

(2) If it is determined by the arbitrators that what is proposed ought to be done, they shall by their award so direct, and in that case each council shall forthwith after notice of the award pass a by-law in accordance with the draft by-law and shall, without unnecessary delay, do all things which on its part are necessary for carrying into effect the objects of the by-law. 3-4 Geo. V. c. 43, s. 467.

Determination by county council of disputes as to opening or maintaining township boundary lines.

468.—(1) Where the councils of the townships having joint jurisdiction over a township boundary line fail to agree as to the character of the work to be done in opening, maintaining or repairing it, or as to the proportions in which the cost of the work is to be borne by the corporations of the townships respectively, any or either of such councils may apply to the council of the county to determine the matters in dispute.

Enforcement by county of opening up or repair on petition of ratepayers.

(2) Where the township councils having the joint jurisdiction over it neglect or refuse to open up and make, maintain and keep in repair any such boundary line, a majority of the ratepayers resident on land abutting on it may apply to the council of the county to enforce the opening up and the making, maintaining and keeping in repair of such boundary line.

What matters to be determined by county council.

(3) The application shall be by petition and the council of the county after notice to all the corporations interested and after hearing them and the petitioning ratepayers, if the petition is by

ratepayers, or such of them as desire to be heard, shall determine in the case provided for by subsection 1, what work shall be done and the proportions in which the cost of it shall be borne by the corporations of the townships respectively, and in the case provided for by subsection 2 whether the boundary line shall be opened up and the proportions in which the corporations of the townships shall respectively bear the cost of opening up, making, maintaining and keeping in repair the boundary line, and in either case may direct that the statute labour or part of it shall be applied by each of the corporations for such purposes.

Appointment of commissioners to enforce order.

(4) The determination and direction of the council of the county shall be embodied in an order or resolution, and the council shall appoint one or more commissioners to execute and enforce any direction so made.

Townships to have opportunity of doing the work.

(5) If the councils of the townships intimate to the council of the county or to the commissioners their intention to proceed with the work directed to be done and to conform to the direction of the council of the county, the commissioners shall delay proceedings to carry out the work directed to be done for a reasonable time to enable the township councils to do it, but if the work is not proceeded with with such despatch as the commissioners deem necessary they shall themselves complete the work.

Apportionment of and collection of cost of work of commissioners.

(6) The cost of any work done by the commissioners shall be by them apportioned between the corporations of the townships in accordance with the order or resolution of the council of the county, and the commissioners shall certify to the treasurer of the county the amount payable by each of such corporations, and the treasurer shall retain the same out of any money in his hands belonging to the corporation, but if there is not in the hands of the treasurer any such money or not sufficient to pay the amount payable by the corporation, the amount payable or the amount of the deficiency, as the case may be, shall be added to the county rate payable by the corporation in default.

(7) This section shall not apply to a township boundary line which is also a county boundary line. 3-4 Geo. V. c. 43, s. 468.

County boundaries not affected.

469. Where the councils of the townships having joint jurisdiction over a county boundary line are unable to agree as to—

Determination by Municipal Board of disputes re deviation of county boundary lines.

(*a*) The necessity for a deviation of the road from the boundary line, or

(*b*) The location of the deviation, or

(*c*) The use of an existing highway in lieu of a deviation, or

(*d*) The proportions in which the cost of opening, making and maintaining the deviation or the existing highway to be used in lieu of a deviation, is to be borne,

any of the councils may apply to the Municipal Board to determine the matter in dispute, and the board or any member of it, after notice to the corporations interested and hearing such of them as desire to be heard, shall determine the matter in dispute and may make such order as may be deemed just, and such order shall be final and not subject to appeal. 3-4 Geo. V. c. 43, s. 469.

See notes to s. 458.

470.—(1) The Ontario Motor League may at its own expense and subject to such regulations as the council of the municipality may prescribe, erect and maintain guide posts at road intersections and mile posts on the highways to indicate distances and danger signals at hills which may be deemed to be dangerous or unsafe for travellers.

Power of Ontario Motor League to erect guide and mile posts, etc.

(2) Every such guide post, mile post and danger signal shall be so placed as not to obstruct the highway or to endanger the safety of travellers, and nothing shall appear on or be affixed of attached to it, but a notice indicating the purpose which the guide post, mile post or danger signal is designed to serve.

How same to be erected.

(3) Every person who contravenes any of the provisions or subsection 2 shall incur a penalty of $5 for every such contravention.

Penalty.

Defacing posts erected.

(4) No person shall cut or throw down or injure or deface any such guide post, mile post or danger signal, and for every contravention of this subsection the person offending shall incur a penalty not exceeding $50. 3-4 Geo. V. c. 43, s. 470.

The penalties are recoverable and may be enforced under The Ontario Summary Convictions Act, R.S.O. c. 90, see s. 498 (1).

Powers of C.W.A. as to erection of guide posts, etc.

471. The Canadian Wheelman's Association of the Dominion of Canada shall have the like power as is by the next preceding section conferred on the Ontario Motor League, and all the provisions of that section shall apply to guide posts, mile posts and danger signals erected or maintained by the Association; but where either the League or the Association has exercised the powers conferred upon it upon any part of a highway the other shall not have the right to exercise its powers thereon. 3-4 Geo. V. c. 43, s. 471.

Establishing, widening, stopping up, etc., highways, laying out boulevards, etc.

472.—(1) The council of every municipality may pass by-laws,

(*a*) For establishing and laying out highways;

Gooderham v. Toronto (1890), 21 O.R. 120, 134, 5, and Gloucester v. Atlantic R. Co. (1902), 3 O.L.R. 85, 4 O.L.R. 262, 1 O.W.R. 485 and other cases noted under s. 249 (1) ("necessity for by-law and other cases,") and under same subsection (by-laws not passed in the public interest).

The expressions "laying out" and "opening" a road are used in 50 Geo. III. c. 1 in an equivalent sense, and actual work on the ground is not required before the road becomes a public highway: per Maclennan, J.A., in Palmatier v. McKibbon (1894), 21 A.R. 441, 451.

A by-law for opening a highway which has not been registered is not effectual in law, and a subsequent by-law providing for the cost of opening it is, therefore, invalid: In re Henderson and Toronto (1898), 29 O.R. 669.

See also Harvey v. Galvin (1916), 11, O.W.N. 38.

The provision as to by-laws for opening highways not becoming effectual until registered is now contained in The Registry Act, R.S.O. c. 124, s. 70 (1).

In re Blomfield and Starland (1915), 9 A.L.R. 203, 25 D.L.R. 43, 32 W.L.R. 905, 9 W.W.R. 552, noted under s. 8.

Where a municipal council has jurisdiction to deal with the subject of opening a new road mere irregularities in the procedure cannot be relied on by way of collateral attack. The task of locating the new road belongs, in the first place, exclusively to the commissioner. Objection to the project as a whole or as to the location of the road or payment of damages, etc., may be urged when the council is asked to confirm or adopt the proceedings, and where such objections are not then urged they cannot afterwards be raised as grounds for invalidating the prior proceedings. The municipal authorities having entered or being entitled to enter have the right especially after notice to remove obstructions from the way: Carr v. Ferguson (1911), 45 N.S. 132, 9 E.L.R. 218.

A *proces-verbal* of a municipal council for the opening of a road is not null and void because it does not provide for the expropriation of the land on which the road is to pass: Ste. Louise v. Chouinard (1896), Q.R. 5 Q.B. 362.

A municipal by-law allowing the owners of timber lands to open a winter road along the whole length of a cultivated tract in perpetuity and without indemnity to the owner of the land is illegal as having the effect of creating, without indemnity, a permanent servitude upon the land over which the road will pass. Such a by-law is also illegal if it permits all or any of the owners of the timber lands to open a road themselves without requiring the supervision of a municipal officer. The third paragraph of art. 840 of the Quebec Municipal Code, which authorizes the council to pass by-laws "in order to permit the opening of winter roads across all fields or woods," does not authorize the opening of permanent winter roads upon the whole length of a lot, but only temporary roads traversing the fields to reach the woods where work is to be done: Beauchemin v. Beloeil (1898), Q.R. 15 S.C. 174.

In proceedings for the opening of first front roads for which reservations have been made in the grant of lands by the Crown, the provisions of the Municipal Code requiring a description of the lands appropriated for the highway and the owners of them are imperative, and not merely matters of form that may be cured by the provisions of art. 16 of that Code, and failure to comply with these requirements nullifies the proceedings: King's Asbestos Mines v. South Thetford (1909), 41 S.C.R. 585, reversing (1908) Q.R. 17 K.B. 566.

A land company conveyed to a municipal corporation a plot of land sub-divided into lots, with avenues and streets, under the following, among other conditions:—"The opening and grading of the . . . avenues lying between . . . Western Avenue and Cote Street, Antoine Road, shall be undertaken by the town in the present year and commenced on or about the 20th instant and continued with due diligence until completed, and the remainder of the . . . avenues shall be graded by the said town when necessary," and it was held that, as the facts did not establish an immediate necessity for opening and grading a public street, the corporation was not bound to do that under the terms of the agreement: Hutchison v. Westmount (1912), 3 D.L.R. 333, affirmed (1914) 49 S.C.R. 621, 16 D.L.R. 853.

A landowner conveyed land to a corporation for a public street upon condition that no special assessment should be levied upon the remainder of his land to defray "the cost of the opening" of the street, but that this condition should not extend to special assessments for drains and macadamizing the street. It was held that "cost of the opening" included all the work necessary to render the street fit to be used by the public for the traffic usual in that community and that the landowner was exempt from assessments for grading, filling in, rock cuttings and levelling undertaken by the corporation in respect of it: Outremont v. Joyce (1912), 9 D.L.R. 499 (P.C.), affirming (1910) Q.R. 20 K.B. 385.

A municipal corporation may demolish a bridge which connects land on the north with a public road, and open another road to the north-west, but if in making these changes it causes injury, direct and immediate, to a landowner by the loss of his harvest, in the operation of his farm, and obliges him to construct another bridge, it is bound to indemnify him: Bedard v. Lochaber West (1916), Q.R. 49 S.C. 459, 29 D.L.R. 312.

Armour v. Regina (1915), 8 S.L.R. 368, 29 D.L.R. 676, 33 W.L.R. 312, 9. W.W.R. 928, noted under s. 249 (1), (necessity for by-law, etc.).

(*b*) For widening, altering or diverting any highway or part of a highway;

Highway commissioners altering the course of a highway are held to an exact compliance with their statutory authority: Winslow v. Dalling (1899), 1 N.B. Eq. 608.

It was held in Marsan v. Guay (1905), Q.R. 28 S.C. 145, that a by-law is necessary to authorize the expropriation of land for widening a highway, but that decision was reversed (1906) Q.R. 16 K.B. 7, on the ground that the general law was inapplicable, and that, under the special provisions of the charter of the municipality, a resolution was sufficient.

A municipal corporation has not the right to change and remove a public road by a simple resolution: Daoust v. Ste. Jeanne De Chantal de L'Ile Perrot (1913), Q.R. 46 S.C. 386.

(*c*) For stopping up any highway or part of a highway and for leasing or selling the soil and freehold of a stopped up highway or part of a highway.

See In re Pelot and Dover (1902), 1 O.W.R. 792; In re Waterous and Brantford (1903), 2 O.W.R. 897, (1904) 4 O.W.R. 355, noted under s. 249 (1) (by-laws not passed in the public interest), and other cases under that heading.

See also In re Bassano (1912), 7 D.L.R. 601, 3 W.W.R. 189, noted under s. 249 (1) (necessity for by-law and other cases).

The power conferred by this clause was, in the Act of 1903, 3 Edw. VII. c. 19, s. 637 (par. 1), limited to public roads, etc., "wholly within the jurisdiction of the council."

It was held under that enactment that the word "wholly" referred not to the locality of the road, but to the jurisdiction of the council over it, and that a council had jurisdiction to pass a by-law closing the part of a continuous highway passing through the municipality and extending into other municipalities, which lay within the municipality: In re Taylor and Belle River (1909), 18 O.L.R. 330, 13 O.W.R. 778.

The same conclusion had been previously reached in In re Falle and Tilsonburg (1873), 23 U.C.C.P. 167.

Rose, J., in the subsequent case of In re Hewison and Pembroke (1884), 6 O.R. 170, 1, suggested a doubt as to the power of a municipal council to "interfere with a section of a road running through more than one municipality."

The roads which under The Municipal Clauses Act may be closed by by-law are not only roads which are wholly situate within the municipality, but also highways or trunk roads leading into districts beyond its boundary: Styles v. Victoria (1899), 8 B.C.R. 406.

It was held in In re Weir and Calgary (1907), 7 W.L.R. 45 (Alta.), where the consent of two-thirds of the owners of the land facing a lane intended to be stopped up was required as a condition precedent to the passing of a by-law to close it, that it was not sufficient that the owners of two-thirds of the lots consented.

Under the provisions of The British Columbia Municipal Act, R.S.B.C. 1911, c. 170, s. 53 (176, 193), empowering municipal corporations to alter, divert or stop up public thoroughfares and to exchange them for adjacent land, a municipal corporation has power by by-law to close up a portion of a highway and dispose of a strip so taken from its width in exchange for adjacent or contiguous land to be used in lieu of it, although the effect should be to cause the narrowing of the highway. Such a by-law is valid although passed without the assent of the ratepayers previously obtained: West Vancouver v. Ramsay (1916), 53 S.C.R. 459, 30 D.L.R. 602 (B.C.), approving West Vancouver v. Ramsay (1915), 21 B.C.R. 401, 22 D.L.R. 826, 31 W.L.R. 415, 8 W.W.R. 835.

The power of municipal councils to sell highways stopped up by them is restricted to original road allowances and to public roads which have been duly dedicated as such and over which the council has established its jurisdiction, and does not extend to streets simply shown on a private plan of subdivision which the council has not improved or assumed any liability to repair.

In re Knudsen and St. Boniface (1905), 15 Man. L.R. 317, 1 W.L.R. 281.

Where an owner, who has made a subdivision and registered a plan of it, cannot himself stop up a street shown on the plan, the council cannot do it for him by passing a by-law for that purpose. *Ib.*

Where a by-law is shown to have been passed for an improper purpose, it should be quashed as being an abuse of the powers conferred on the council by The Municipal Act. *Ib.*

The approval by the Lieutenant-Governor in Council pursuant to s. 694 (*c*) of The Municipal Act has not the effect of making valid a by-law unauthorized by the Act. *Ib.*

The promulgation of a by-law cannot have the effect of validating a by-law which the council had no authority to pass; it simply cures defects in the substance and form of the by-law and in the steps leading up to the passing of it. *Ib.*

Where there is a statutory right to appeal from a by-law closing a highway within ten days after the passage of the by-law, the time is to be computed from the day on which the by-law comes into force or effect, and not from the day on which the by-law is finally passed if it is provided that it shall not take effect until a later day: Winnipeg v. Brock (1910), 16 W.L.R. 45, (1911) 20 Man. L.R. 669, 18 W.L.R. 28, 45 S.C.R. 271, 20 W.L.R. 243, 1 W.W.R. 435.

Municipal corporations are liable for damage caused to riparian owners by making access to their immovables very difficult by closing highways or public places: Montreal Brewing Company v. Montreal (1906), Q.R. 30 S.C. 280.

The jurisdiction of the Board of Railway Commissioners for Canada as to the closing of highways is limited to the extinguishment of the public right to cross the railway, and is ordinarily exercised by first granting permission to divert the highway and afterwards making an order to close it within the limit of the railway company's right of way after the construction of the new grade crossing on the diverted highway: In re Applications to Close Highways at Railway Crossings (1913), 12 D.L.R. 389 (Board of Railway Commissioners for Canada).

A highway cannot be sold until it has been stopped up: In re Choate and Hope (1858), 16 U.C.R. 424, 428.

That case was distinguished in Pirie v. Parry Sound Lumber Company (1907), 11 O.W.R. 11 (1909), 13 O.W.R. 319, in which it was held that a by-law to stop up the highway was not necessary where the abutting landowner is entitled under a provision corresponding with s. 493 to a conveyance of it.

(*d*) For setting apart and laying out such parts as may be deemed expedient of any highway, for the purpose of carriage ways, boulevards and sidewalks, and for beautifying the same, and making regulations for their protection;

(*e*) For permitting subways for cattle under and bridges for cattle over any highway.

Exceptions as to exercise of power.

(2) Nothing in subsection 1 shall authorize a council to interfere with any public road or bridge vested in the Crown in right of Ontario or in any public department, board or officer of Ontario.

Approval of Lieutenant-Governor to by-law.

(3) A by-law passed under the authority of clause (*b*) or clause (*c*) of subsection 1 in respect of an allowance for road reserved in the original survey along or leading to the bank of any river or stream or on the shore of any lake or other water shall not take effect until it has been approved by the Lieutenant-Governor in Council.

Approval of Governor-General to by-law.

(4) The powers conferred by subsection 1 shall not be exercised without the consent of the Governor-General in Council in respect of,

(*a*) Any street, lane or thoroughfare made or laid out by His Majesty's Ordnance or the Principal Secretary of State in whom the Ordnance estates became vested under the Act of the late Province of Canada passed in the 19th year of the reign of Her late Majesty Queen Victoria, Chapter 45, or under Chapter 24 of the Consolidated Statutes of Canada, or made or laid out by the Government of Canada;

(*b*) Any land owned by the Crown in right of the Dominion of Canada;

(*c*) Any bridge, wharf, dock, quay or other work vested in the Crown in right of the Dominion of Canada;

or so as to interfere with any land reserved for military purposes or with the integrity of the public defences, and the consent of the Governor-General in Council shall be recited in the by-law, but the by-law shall not be quashed or open to question because of the omission to recite it if the consent has been in fact given.

Limitation of power of county.

(5) The powers conferred by clause (*c*) of subsection 1 shall not be exercised by the council of a county in respect of a highway or part of a highway within the limits of a city, town or village in or adjoining the county.

Approval of District Judge or county council to township by-law.

(6) A by-law of the council of a township, passed under the authority conferred by clause (*c*) of subsection 1, in the case of a township in unorganized territory, shall not have any force unless and until approved by a Judge of the District Court of the district in which the township is situated, and in other cases unless and until confirmed by a by-law of the council of the county in which the township is situate passed at an ordinary meeting of the council held not sooner than three months or later than one year after the passing of the by-law of the council of the township. 3-4 Geo. V. c. 43, s. 472.

See in re Cameron and United Townships of Hagarty, Sherwood, Jones, Richards and Burns (1907), 10 O.W.R. 357, noted under s. 286, as to the time from which runs the one year within which an application to quash a by-law which requires confirmation by the county council must be made.

See also annotations to In re Seguin and Hawkesbury in 9 D.L.R. 490 to 498 (inc.).

See as to presumption with respect to compliance with formalities, Dickson v. Kearney (1888), 14 S.C.R. 743, Cameron's S.C. Cas. 53, reversing (1887) 20 N.S. 95; Palmatier v. McKibbon (1894), 21 A.R. 441; and Emsley South v. Miller (1905), 6 O.W.R. 726, noted under s. 432 (presumption in favour of validity of by-laws).

Right of ingress and egress not to be taken away by closing road

473.—(1) A by-law shall not be passed for stopping up, altering or diverting any highway or part of a highway if the effect of the by-law will be to deprive any person of the means of ingress and egress to and from his land or place of residence over such highway or part of it unless in addition to making compensation to such person, as provided by this Act, another convenient road or way of access to his land or place of residence is provided.

The onus of showing that another convenient road is open to the applicant is upon the corporation: In re Adams and East Whitby (1882), 2 O.R. 473.

In In re Seguin and Hawkesbury (1912), 4 O.W.N. 521, 523, 9 D.L.R. 487, 489, 23 O.W.R. 857, the Divisional Court appears to have thought that it was necessary that the by-law should provide for the compensation being paid.

This view is contrary to the decision of the Court of Appeal in In re McArthur and Southwold (1878), 3 A.R. 295, and to what was held by Teetzel, J., in In re McLean and North Bay (1906), 7 O.W.R. 169.

The change in the wording of subs. 1 from that of the provision under consideration in the earlier of these cases strengthens the reasoning on which the decision was based. Where the words "in addition to compensation" occurred, it is now "in addition to making compensation to such person as provided by this Act."

Where access to private property by a public highway . . . is interfered with . . . and the value of the property, irrespective of any particular use which may be made of it, is so dependent upon the existence of that access as to be substantially diminished by its obstruction, the owner is entitled to compensation for such interference: Caledonian Railway Company v. Walker's Trustees, L.R. (1882) 7 A.C. 259; In re Neal and Port Hope (1914), 7 O.W.N. 264.

The obstruction of access to a private property need not be *ex adverso*, but it must be proximate and not remote or indefinite to entitle the owner to compensation for the loss of it: Caledonian Railway Company v. Walker's Trustees (supra); In re Tate and Toronto (1905), 10 O.L.R. 651, 6 O.W.R. 670; In re Taylor and Belle River (1910), 1 O.W.N. 609, 15 O.W.R. 733, 2 O.W.N. 387; In re Neal and Port Hope (supra). In the last of these cases the Caledonian Railway Company case was followed and Rex v. McArthur (1904), 34 S.C.R. 570, was distinguished on the ground that in that case the injury which the landowner suffered, he suffered as one of the public.

All these cases are noted under s. 325.

It was held in In re Falle and Tilsonburg (1873), 23 U.C.C.P. 167, that a person who was not the owner of any land abutting on the part of a road which was stopped up, although he had land on another part of the road, had no right to raise any question under 29-30 Vict. c. 51, s. 320, which corresponds with this subsection.

Where a farm lot, occupied by the owner as one farm, is divided by a railway into two separate parcels, having a farm crossing provided giving access from one parcel to the other, and, in addition to a road which affords access to the parcel where the residence is, there is another road which gives access to the other parcel and which, except the farm crossing, is the only mode of access to it, the latter road cannot be stopped up unless, in addition to compensation, another road or way is provided in lieu of it: In re Martin and Moulton (1901), 1 O.L.R. 645.

A road need not actually form a boundary of land if there is ingress to and egress from it over the road: In re Brown and Owen Sound (1907), 14 O.L.R. 627.

Where there is a public highway in front of a lot, the owner is not excluded within the meaning of this section from ingress and egress by the closing of a highway running along the rear of the lot: Hanley v. Brantford (1910), 1 O.W.N. 1121, 16 O.W.R. 812.

A landowner who owns and occupies a parcel of land, consisting of two small lots situate between two streets, and never makes use of one of the streets, but uses the other as his means of access to his property, will not be excluded from ingress to and egress from his land or place of residence within the meaning of this section by the stopping up of the unused street: Jones v. Tuckersmith (1915), 33 O.L.R. 634, 23 D.L.R. 569.

It is not a condition precedent to the passing of a by-law for stopping up a highway that compensation should be given or provided for by the by-law: White v. Louise (1891), 7 Man. L.R. 231.

By-law, when to take effect.

(2) The by-law shall not take effect until the sufficiency of such road or way of access has been agreed upon or unless and until, if not agreed upon, its sufficiency has been determined by arbitration as hereinafter mentioned.

(3) If such person disputes the sufficiency of the road or way of access provided, the sufficiency of it shall be determined by arbitration under this Act, and if the amount of compensation is also not agreed upon both matters shall be determined by one and the same arbitration.

Arbitration to determine sufficiency of road.

(4) If the arbitrators determine that the road or way of access provided is insufficient they may by their award determine what road or way of access should be provided, and in that case, unless such last-mentioned road or way of access is provided, the by-law shall be void and the corporation shall pay the costs of the arbitration and award. 3-4 Geo. V. c. 43, s. 473.

By-law void if road insufficient.

474.—(1) A person in possession of and having enclosed with a lawful fence that part of an original allowance for road upon which his land abuts which has not been opened for public use by reason of another road being used in lieu of it or of another road parallel or near to it having been established by law in lieu of it shall as against every person except the corporation the council of which has jurisdiction over the allowance for road be deemed to be legally possessed of such part until a by-law has been passed by such council for opening it.

Possession of unopened road allowance.

(2) No such by-law shall be passed until notice in writing of the intention to pass it has been given to the person in possession, at least eight days before the meeting of the council at which the by-law is to be taken into consideration. 3-4 Geo. V. c. 43, s. 474.

Notice of by-law to be given.

It was held under the corresponding section of 3 Edw. VII. c. 19, s. 641 (1), that when the municipal council proposes to open the original allowance for road, the owner of the abutting land is entitled to compensation: Lister v. Clinton (1909), 18 O.L.R. 197, 13 O.W.R. 582.

In this case the by-law was quashed upon the ground that it did not provide for the compensation to which the landowner was held to be entitled. This would not seem to be a good ground for quashing the by-law. It is not essential that such a by-law should provide for the compensation. See notes to s. 473 (1).

Publication of by-law, etc.

475.—(1) Before passing a by-law for stopping up, altering, widening, diverting, selling or leasing a highway or for establishing or laying out a highway,

(*a*) Notice of the proposed by-law shall be published at least once a week for four successive weeks, and in the case of a village or township shall be posted up for at least one month in six of the most public places in the immediate neighbourhood of the highway or proposed highway, and

See as to presumption with respect to compliance with formalities, Dickson v. Kearney (1888), 14 S.C.R. 743, Cameron's S.C. Cas. 53, reversing (1887) 20 N.S. 95; Palmatier v. McKibbon (1894), 21 A.R. 441; and Emsley South v. Miller (1905), 6 O.W.R. 726, noted under s. 432 (presumption in favour of validity of by-laws).

ONTARIO CASES.

In In re Birdsall and Asphodel (1880), 45 U.C.R. 149, followed in In re Campbell and Southampton (1898), 34 C.L.J. 197, 18 C.L.T. Occ. N. 119, the by-law was quashed because the notice did not state the day on which it was to be considered.

In re Birdsall and Asphodel was also followed in In re Rogers (1915), 7 O.W.N. 717, 22 D.L.R. 590.

In re Laplante and Peterborough (1884), 5 O.R. 634, in which it was held that a notice given on 28th March for the following 28th April was not a sufficient notice. That case was followed in In re Ostrom and Sidney (1888), 15 O.R. 43, 15 A.R. 372.

A notice that any person, whose land, etc., and who petitions within one month to be heard, will be heard in person or by counsel or solicitor, by the council before the by-law is passed, is sufficient: per Boyd, C., in In re Martin and Moulton (1901), 1 O.L.R. 645, 6, 7.

Unless the applicant to quash such a by-law was misled by the failure to state in the notice of the intention to pass it the hour, although the day was stated, on which the by-law would be taken into consideration, the by-law will not be quashed.

Where the person interested attends the meeting of the council and is heard, the insufficiency of a notice is immaterial.

Lister v. Clinton (1909), 18 O.L.R. 197, 13 O.W.R. 582.

Manitoba.

A by-law for closing an original allowance for road and selling it to one of the abutting landowners was passed after notice of the intention to close the road allowance, but no notice was given of the intention to sell it.

Held, that this was fatal, and that the applicant to quash the by-law, by having attended the meeting at which the by-law was passed, and objecting, was not estopped from taking exception to the want of notice.

White v. Louise (1891), 7 Man. L.R. 231.

Quebec.

Under art. 238 of the Municipal Code, seven clear days must elapse between the date of publication of notice of a meeting of the council to consider a *proces-verbal* with respect to roads or watercourses and the day of the meeting: Comeau v. Ste. Edwidge de Clifton (1899), Q.R. 15 S.C. 405.

Article 350 of the new Municipal Code is the same as art. 238 of the former code.

A notice given by a municipal body for the amendment of a by-law or the passing of another relating to a public road without identifying the road or specifying the proposed amendment or the nature of the new by-law is not sufficient: Nelson v. Megantic (1901), Q.R. 20 S.C. 334.

A public notice addressed to "all whom it may concern," stating that at a named time and place a municipal council will pass a by-law which will affect a person who is not otherwise notified and who has had no opportunity of being heard, is not sufficient: Bouchard v. St. Alexandre (1904), Q.R. 25 S.C. 415, affirmed on review, 31st October, 1904.

A resolution of a municipal council which orders a road to be closed without previous notice to the public is void: Bedard v. Quebec (1909), Q.R. 37 S.C. 186.

Saskatchewan.

Until notice is given to the registered or assessed owners of all land abutting upon a street or lane which it is proposed to close by by-law under the provisions of the Ordinances of 1903, c. 28, s. 5, a municipal council has no jurisdiction to pass a by-law closing the street or lane: Gesman v. Regina (1909), 2 S.L.R. 50, 10 W.L.R. 136.

(*b*) The council shall hear in person or by his counsel, solicitor or agent any person who claims that his land will be prejudicially affected by the by-law and who applies to be heard.

Notices.

(2) The clerk shall give the notices upon payment, by the applicant, if any, for the by-law, of the reasonable expenses to be incurred in so doing. 3-4 Geo. V. c. 43, s. 475.

When publication of by-law not required.

476. Where the owners of and other persons interested in the land required to be taken for the highway consent in writing to the passing of the by-law for establishing and laying it out, or where such land has been acquired by the corporation, section 475 shall not apply to the by-law. 3-4 Geo. V. c. 43, s. 476.

Side lines in double front concessions.

477.—(1) Where an allowance for a sideline road between lots in a double front concession in a township was so run in the original survey that the line in the front half of the concession does not meet the line in the rear half, the council of the township may open and lay out a road to connect the ends of such lines where they do not so meet.

Term of by-law.

(2) The by-law shall provide that the road shall be opened and laid out in accordance with a survey to be made by an Ontario land surveyor named in the by-law.

Appointment of another surveyor by Judge.

(3) A Judge of the County or District Court of the county or district in which the township is situate, on the application of any person over whose land the connecting road will pass who objects to the surveyor appointed by the by-law may appoint another Ontario land surveyor in the place of the one so appointed.

Application for appointment.

(4) The application shall be made within one month after the service of the copy of the by-law on the applicant and at least five days' notice of the time when and the place where it will be heard by the Judge shall be served upon every other person over whose land the connecting road will pass and upon the clerk of the municipality.

(5) The surveyor appointed by the by-law or, if another is appointed by the Judge in his place, the surveyor so appointed shall determine the compensation to be paid to the persons whose lands are taken for the connecting road, and the amount so determined shall be paid to them by the corporation of the township.

Compensation, determination as to.

(6) The determination of the surveyor as to the compensation shall be final. 3-4 Geo. V. c. 43, s. 477.

Determination, final.

478.—(1) Where the council of a municipality desiring to open an original allowance for road has by mistake opened a road which was intended to be, but is not wholly or partly, upon such allowance, the land occupied by the road as so opened shall be deemed to have been expropriated under a by-law of the corporation, and no person on whose land such road or any part of it was opened shall be entitled to bring or maintain an action for or in respect of what was done or to recover possession of his land, but he shall be entitled to compensation under and in accordance with the provisions of this Act as for land expropriated under the powers conferred by this Act.

Mistakes in opening road allowances.

(2) The right to compensation shall be forever barred if the compensation is not claimed within one year after the land was first taken possession of by the corporation. 3-4 Geo. V. c. 43, s. 478.

When right to compensation barred.

The corresponding provision to this section in the Municipal Act of Manitoba, R.S. 1913, c. 133 ss. 631-632 and the limitation for making claims in two years.

There is no similar provision in the Municipal Act of the other provinces.

479.—(1) No highway shall be laid out in any municipality without the sanction of the council of the municipality.

Sanction of council to laying out of highways.

(2) No highway less than 66 feet in width or except in a city or town more than 100 feet in width, shall be laid out by the council of the municipality without the approval of the Municipal

Width of highways.

Board or by any owner of land without the approval of the council of the municipality and of the Municipal Board.

Rev. Stat. c. 194.

(3) Nothing in this section shall affect the provisions of *The City and Suburbs Plans Act*.

This Act is repealed by The Planning and Development Act, 7 Geo. V. c. 44, s. 18, and this section is now subject to the provisions of that Act, which will be found printed *infra*.

Assent of council or Judge required.

(4) Subsection 2 shall not apply to a township in unorganized territory, and a highway less than 66 feet in width may be laid out by the council of any such township subject to and in accordance with the regulations of the Department of Lands, Forests and Mines. 4 Geo. V. c. 33, s. 20.

"Unorganized territory." See s. 2 cl. (*t*).

Dwelling houses on narrow streets.

480. The council of an urban municipality may pass by-laws for regulating the erection or occupation of dwelling houses on narrow streets, lanes or alleys or in crowded or unsanitary districts. 3-4 Geo. V. c. 43, s. 480.

"Urban municipality." See s. 2 cl. (*u*).

Power to regulate and prohibit erection of dwelling houses.

481.—(1) The council of a city having a population of not less than 50,000 may pass by-laws for

(*a*) Prohibiting the erection or occupation of dwelling houses on highways, lanes or alleys of less width than that prescribed by the by-law;

(*b*) Prescribing the minimum area of vacant land which shall be attached to and used with any dwelling house thereafter erected, as the courtyard or curtilage of it;

(*c*) Regulating the manner in which buildings intended to be occupied as dwelling houses are to be constructed within the municipality or within any defined area of it.

(*d*) Prohibiting the erection of dwelling houses or the alteration of other buildings for the purpose of adapting them for use as dwelling houses, if the same front on a highway less than 40 feet in width, unless the street has been established as a highway by by-law of the council or otherwise assumed for public use by the corporation. 3-4 Geo. V. c. 43, s. 481 (1).

Subsection 2 *of section* 481 *repealed by 4 Geo. V. c. 33, s. 21, which declared that no by-law passed under section* 481 *should be deemed to be invalid by reason of any omission to comply with the provisions of subsection* 2.

"Population." See s. 2 cl. (*m*).

482. By-laws may be passed—

Granting aid for opening or improving, etc., highways.

(1) By the council of every municipality for granting aid to the corporation of any immediately adjoining municipality towards opening, widening, maintaining or improving any highway within such municipality or constructing, maintaining or improving any bridge therein.

By local municipalities to county.

(2) By the council of every local municipality for granting aid to the corporation of the county in which the municipality is situate towards opening, and making any new road on the boundary of the municipality or constructing any new bridge on such boundary.

By cities and towns to township.

(3) By the councils of cities and towns for granting aid to the corporation of a township in the county in which the city or town is territorially situate or in an adjoining county towards opening, widening, maintaining or improving any highway in such township which constitutes or is to constitute or forms or is to form part of a highway leading to such city or town, or towards constructing, maintaining or improving any bridge forming or which is to form part of such highway.

By counties to towns, villages and townships, etc.

(4) By the councils of counties for granting aid towards making, improving or maintaining any county or township boundary line.

(5) By the councils of counties for granting aid to the corporation of any town, village or township towards,

- (*a*) Opening any new highway or constructing any new bridge in the municipality;
- (*b*) Opening, widening, maintaining or otherwise improving any highway leading from or passing through the municipality into a county road, or constructing, maintaining or improving any bridge forming, or which is to form, part of such highway.

By townships to county.

(6) By the councils of townships—

- (*a*) For granting aid to the corporation of a county adjoining that in which the township is situate towards opening, widening, maintaining or improving any highway lying between the township and another municipality in the adjoining county, or towards constructing, maintaining or improving any bridge on such highway;
- (*b*) For granting aid for the like purposes to the corporation of the county in which the township is situate in respect of any highway or bridge within the township assumed as a county road or bridge or agreed to be so assumed on condition that such aid shall be granted.

By townships in unorganized territory.

(7) By the council of a township in unorganized territory for opening, widening, maintaining or improving any highway or constructing, maintaining or improving any bridge in an adjoining municipality or in a municipality situate in such adjoining municipality or in an adjoining unorganized township or in adjoining unsurveyed territory or for granting aid to any adjoining municipality or to any municipality situate in such adjoining municipality for any of such purposes.

(8) The aid may be granted by way of loan or otherwise. 3-4 Geo. V. c. 43, s. 482. **Character of aid.**

"Adjoining." See notes to s. 18 (*2*).

"Unorganized territory." See s. 2 cl. (*t*).

"Or in a municipality situate in such adjoining municipality." These words are intended to cover the case of a highway or bridge in a local municipality situate in a county which adjoins the township the council of which desires to exercise the power conferred by subs. 7.

483. By-laws may be passed by the council of every municipality

1. For setting apart portions of the highways at or near the sides of them for the purpose of boulevards, and for permitting the owners of land abutting on a highway to construct, make and maintain at their own expense boulevards on that part of the highway which may be set apart for that purpose, but not so as unreasonably to confine, impede or incommode public traffic. **Boulevards.**

2. For regulating the construction, maintenance and protection of such boulevards. 3-4 Geo. V. c. 43, s. 483, pars. 1, 2. **Regulations.**

3. For permitting the owners of land to make, maintain and use areas under and openings to them in the highways and sidewalks [and for permitting the owners of land abutting on one side of a highway to construct, maintain and use a bridge or other structure across the highway for the purpose of access to land owned by such owners on the other side of the highway], for prescribing the terms and conditions upon which the same shall be made, [constructed], maintained and used, and for making such annual or other charge for the privilege conferred by the by-law as the council may deem reasonable. **Areas and openings under highways.**

The words in brackets were added by 7 Geo. V. c. 42, s. 22 (1).

(*a*) Such annual or other charge shall be payable and payment of it may be enforced in like manner as taxes are payable and payment of them may be enforced. **Annual charge for.**

Liability of corporation for damages.

(*b*) The corporation shall be liable for any want of repair of the highway which may result from the construction, maintenance and use of any such area or opening, [bridge or structure], but shall be entitled to the remedy over provided for by section 464 against the person by whose act or omission the want of repair is caused. 3-4 Geo. V. c. 43, s. 483, par. 3; 7 Geo. V. c. 42, s. 22 (1-2).

The words in brackets were added by 7 Geo. V. c. 42, s. 22 (2).

Bicycle and foot paths.

4. For setting apart so much of any highway as the council may deem necessary for the purposes of a bicycle path or of a foot path.

(*a*) Any person who rides or drives a horse or other beast of burden or a motor vehicle, wagon, carriage or cart over or along any such path shall incur a penalty of not less than $1 or more than $20.

This penalty is recoverable and may be enforced under the Summary Convictions Act R.S.O. c. 90. See s. 498 (1).

Tolls on highways and bridges.

5. For raising money by toll on any highway, bridge or other work to defray the expense of making, maintaining or repairing it.

Granting right to take tolls.

6. For granting to any person in consideration or part consideration of planking, gravelling or macadamizing a highway, or of building a bridge, the tolls fixed by by-law to be levied on the work for a period of not more than twenty-one years after the work has been completed, and after such completion has been declared by a by-law of the council;

(*a*) The grantee of the tolls shall, during such period, maintain and keep in repair the highway or bridge.

Selling timber on road allowance. Rev. Stat. c. 29.

7. Subject to the rights of a Crown timber licensee under *The Crown Timber Act*, for preserving or selling the timber or trees on any original allowance for road.

The paragraph in 3 Edw. VII. c. 19 (par. 7 of s. 640) included "stone, sand and gravel," but these words were left out in 3-4 Geo. V. c. 43.

In Taylor v. Gage (1913), 30 O.L.R. 75, 16 D.L.R. 686, which was decided under the law in force before that change was made, where a landowner was given permission by the council having jurisdiction over the highway to remove for his own use on his land the gravel from a part of an unopened road allowance on condition that he would gravel portions of other nearby highways, and in removing the gravel the landowner interfered with a means of access to and from the road allowance of another landowner, it was held that what was done in removing the gravel, because it was not done under the authority of a by-law, could not be justified, and was not a work of repair undertaken by the landowner under the authority or by the direction of the council, and was a work which could lawfully be done by the corporation itself only under the authority of a by-law, and that the transaction was a sale of the gravel, and to authorize it a by-law was necessary.

Regulations re pits, precipices, etc.

8. For making regulations as to pits, precipices and deep waters and other places dangerous to travellers.

Stone and gravel pits.

9. For acquiring either alone or jointly with the corporation of another municipality such land in either municipality as may be deemed necessary for procuring therefrom stone or gravel for use in making, maintaining or repairing the highways under the jurisdiction of the council or councils.

Power to enter upon land to take timber, gravel, etc.

10. For entering upon and searching for and taking from land within the municipality, or with the consent of the council of an adjacent municipality expressed by by-law or resolution from land in such municipality, such timber, gravel, stone or other material as may be necessary for constructing, maintaining and keeping in repair the highways and bridges;

In Cook v. North Vancouver (1911), 16 B.C.R. 129, 18 W.L.R. 349, it was held, under a provision similar in some respects to par. 10, that the entry by a municipal council on land and taking timber, stone, gravel or other material from it for the construction or repairing of roads is unlawful; that before exercising the right the council must give information to the landowner of its intention to do so and as to the extent of the right intended to be exercised, and that it is only when that has been done and the parties are unable to agree as to the compensation that the arbitration provision comes into play.

No such question can arise under this paragraph, because of the provision of clause (*a*) that the power to take cannot be exercised until the compensation has been agreed upon or has been determined by arbitration.

Compensation—how determined.

(*a*) The compensation to be paid to the owners of and other persons interested in the land for the timber, gravel, stone or other material shall be agreed upon or determined by arbitration before the power to take it is exercised.

(*b*) The compensation may be a lump sum for the privilege of taking as much timber, stone, gravel or other material as may be required, or a sum determined by the quantity taken, or a price by the cubic yard or otherwise for what may be taken, as may be agreed on or be determined by the arbitrators.

(*c*) Where it is necessary in the exercise of any of the powers conferred by the by-law to pass through or over the land of another person, the corporation may do so as occasion may require, doing no unnecessary damage, but before doing so the compensation to be paid for the exercise of such power shall be agreed upon or determined by arbitration.

"Adjacent." See notes to s. 18 (1).

As to the powers under *The Highway Improvement Act*, see 7 Geo. V. c.27, s. 58.

Purchasing or renting road making machinery.

11. For purchasing conditionally, or otherwise, or for renting for a term of years or otherwise, roadmaking machinery and appliances for the purposes of the corporation, and for borrowing money for the purpose of paying the purchase price for any period not exceeding five years and for issuing debentures for the money so borrowed, or for issuing to the vendor debentures payable within that period in payment of the purchase money.

(*a*) The debentures issued under this paragraph shall be on the instalment plan. 3-4 Geo. V. c. 43, s. 483, pars. 4-11.

"Instalment plan." See s. 284 (4).

It is not necessary that the by-law be assented to by the electors s. 289 (2) cl. (*l*).

484. The council of every municipality may pass by-laws for subscribing for any number of shares in the capital stock of or for lending money to or guaranteeing the payment of any money borrowed by a bridge company incorporated for the purpose of erecting and maintaining any bridge within, or partly within, the municipality or between it and another municipality. 3-4 Geo. V. c. 43, s. 484.

Taking stock in bridge company.

See notes to s. 397 (17) as to the right of a council to put the shares in the name of a trustee for the corporation.

485. The council of every municipality through or adjoining which any toll road passes may enter into an agreement with the owner of the road to expend on it for a limited number of years, such statute labour or sum of money as may be agreed upon and that at the end of the term of years agreed upon such road shall be toll free and shall become the property of the corporation of the municipality in which it is situate. 3-4 Geo. V. c. 43, s. 485.

Power to agree with owners of toll road as to the expenditure of statute labour thereon.

486. The council of a local municipality may pass by-laws for entering into and performing any agreement with any other council in the same county for executing, at their joint expense and for their joint benefit, any work within the jurisdiction of the council. 3-4 Geo. V. c. 43, s. 486.

Joint works with other municipalities.

"Local municipality." See s. 2 cl. (*g*).

TREES—PLANTING, PROTECTION AND REMOVAL OF.

487. The council of every municipality may pass by-laws—

Removal of trees.

1. For causing any tree, planted or growing on any highway, square, lane or other public communication, to be removed if and when deemed necessary for any purpose of public improvement; but—

(*a*) The owner of the adjacent land shall be entitled to ten days' notice of the intention of the council to remove such tree, and to be recompensed for his trouble in planting and protecting it, but neither he nor the occupant of the land shall be entitled to any further or other compensation.

(*b*) Neither the owner of the adjacent land nor any pathmaster or other public officer, nor any other person, shall remove or cut down or injure any such tree without the express permission of the council.

"**Adjacent.**" See notes to s. 18 (1).

Planting trees.

2. For planting and preserving shade and ornamental trees upon any highway, and for granting to any person or association of persons money to be expended for such purposes.

Trees planted on a highway with the consent of the municipal authorities and in accordance with municipal by-laws become appurtenant to the ownership of the immovable in front and for the advantage of which they were planted, and the owner of the immovable may maintain an action for compensation against his neighbours when, by reason of an industry carried on by them, the trees have been destroyed: L'Hussier v. Brosseau (1901), Q.R. 20 S.C. 170.

Section 2 (2) of The Tree Planting Act, R.S.O. c. 213, provides that such trees shall be the property of the owner of the land adjacent to the highway and nearest to them; and in Douglas v. Fox (1880), 31 U.C.C.P. 140, a similar conclusion was reached as to his right to maintain an action against a wrongdoer for destroying or injuring them.

Ornamental trees.

3. For prohibiting the injuring or destroying of trees or shrubs on the highways, planted or preserved for shade or ornament.

Authority to plant, trim and cut down, etc., trees.

4. For authorizing the Park Commissioner or any officer appointed for that purpose or a committee of the council to,

(*a*) Plant or cause to be planted trees in the highways of the municipality;

(*b*) Trim or cause to be trimmed all trees on private property the branches of which extend over a highway;

(*c*) Cut down or remove or cause to be cut down or removed all decayed trees;

(*d*) Remove or transplant or cause to be removed or transplanted any tree planted or growing in any highway, square, lane or other public communication after 48 hours' notice in writing to the occupant of the land opposite to which the tree is planted or growing, but no live tree, unless within 30 feet of another tree, shall be removed without the consent of such occupant.

A resolution of the council is not a sufficient authority for the exercise by a committee of this power, but it must be conferred by by-law: In re Allen and Napanee (1902), 4 O.L.R. 582.

Service of notice.

(1*a*) The notice mentioned in clause (*d*) may be given by leaving it with a grown-up person resident upon the land, or if the land is unoccupied by posting it in a conspicuous place on the land.

Non-liability for acts done.

(1*b*) Neither the corporation nor any person acting under the authority of a by-law for the purposes mentioned in this paragraph shall incur any liability by reason of anything done under the authority of the by-law if reasonable care, skill and judgment are exercised in the doing of it, nor shall the corporation be liable to make compensation to the owner or occupant of the land further than as provided by this section.

General powers not affected.

(1*c*) Nothing in this paragraph shall limit the powers conferred by paragraphs 1, 2 and 3. 3-4 Geo. V. c. 43, s. 487.

The provision of section 2 (4) of The Tree Planting Act, R.S.O. c. 213, as to trees, shrubs or saplings left standing means left standing by a municipal corporation: Wolff v. Kehoe (1902), 1 O.W.R. 78.

Cutting down trees on either side of highway.

488.—(1) The council of a county or a township may pass by-laws for requiring that on each or on either side of a highway or part of a highway which passes through a wood the trees, except such as are reserved by the owner for ornament or shelter shall for a space not exceeding 25 feet from the limits of the highway or part of it be cut down and removed by the owner or occupant of the land within a time to be appointed by the by-law, and if he fails to do so, authorizing such person as may be named in the by-law to cut down and remove them.

Failure of owner or occupant to cut down, etc.

(2) Where the owner or occupant fails to cut down and remove such trees in accordance with the requirement of the by-law the person named in the by-law for that purpose may cut down and remove them, and the trees may be used for the construction, improvement or repair of any highway or bridge in the road division in which the land is situate or may be sold by him to defray the expenses incurred in carrying out the provisions of the by-law. 3-4 Geo. V. c. 43, s. 488.

Expenditure for works in any county of a union.

489.—(1) The councils of united counties may pass by-laws for raising or borrowing money to be expended exclusively in any one of the counties forming the union.

What members to vote on by-law.

(2) None of the members of the council but those representing local municipalities in the county in which the expenditure is to be made shall vote upon the by-law except in the case of an equality of votes, when the warden shall have the casting vote.

What property assessable for rates.

(3) The sums to be raised by taxation for the purpose of making any such expenditure and the sums required to be raised to pay the principal and interest of any money borrowed for that purpose shall be assessed and levied only upon the rateable property in the county in which the expenditure is to be made.

Debentures, issue of.

(4) Every debenture issued under the authority of the by-law shall be issued as the debenture of the corporation of the united counties, but it shall be stated in the body of it that the payment of the principal and interest is to be provided for by a special rate upon the rateable property in the county in which

the expenditure is to be made and upon that property only. 3-4 Geo. V. c. 43, s. 489.

Prizes for best kept roadside, etc.

490. The council of a township may pass by-laws for granting a prize not exceeding $10 for the best kept roadside, farm front and farm house surroundings, in each public school section in the township, and for prescribing the conditions upon which such prizes may be competed for and awarded. 3-4 Geo. V. c. 43, s. 490.

491. The councils of all municipalities may pass by-laws—

Obstruction of highways.

1. For prohibiting or regulating the obstructing, encumbering, injuring or fouling of highways or bridges;

In Forster v. Medicine Hat (1914), 17 D.L.R. 391, 28 W.L.R. 685, 6 W.W.R. 548 (Alta.), it was held that where a corporation, by mere license and voluntary concession, permits a landowner to put steps on the highway as an approach to his property, it has the right at will to withdraw the license without the owner's consent or concurrence.

It is difficult to see what right the corporation had to permit such a use of the highway.

In Scott v. Barron (1903), 2 O.W.R. 124, the defendant was restrained from erecting a platform upon land set apart for a lane.

See also notes preceding s. 348, under the heading "Actions by Corporations."

Removal of doorsteps, etc.

2. For requiring doorsteps, porches or other erections or things projecting into or over any highway to be removed by the owner or occupant of the land in connection with which they exist.

Prohibiting building or maintaining fences on highways.

3. For prohibiting the building or maintaining of fences on any highway or the placing or depositing of firewood or any other thing calculated to obstruct it or to obstruct or interfere with public travel on it, on any highway or bridge, and for requiring the removal of them by the person by whom the same are or were so built, maintained, placed or deposited.

Worm fences.

(*a*) Unless the by-law otherwise provides, a by-law passed under the authority of paragraph 3 shall not extend or apply to a worm fence which is not for more than half its width upon the highway, or to materials to be used for the construction or repair of a highway or bridge, if they do not interfere with the use of it for public travel.

Prohibiting throwing dirt, glass, etc., on highways.

4. For prohibiting the throwing, placing or depositing on any highway or bridge of dirt, filth, glass, handbills, paper, or other rubbish or refuse, or the carcass of any animal. 3-4 Geo. V. c. 43, s. 491.

Selling original road allowance.

492.—(1) Where a highway for the site of which compensation was paid has heretofore or shall hereafter be established and laid out in place of the whole or any part of an original allowance for road, or where the whole or any part of a highway has heretofore been or shall hereafter be legally stopped up, if the council determines to sell such original allowance or such stopped up highway, the price at which it is to be sold shall be fixed by the council, and the owner of the land which abuts on it shall have the right to purchase the soil and freehold of it at that price.

Prior right of owners of abutting lands.

(2) Where there are more owners than one, each shall have the right to purchase that part of it upon which his land abuts, to the middle line of the stopped up highway.

Sale by council to other persons.

(3) If the owner does not exercise his right to purchase within such period as may be fixed by the by-law or by a subsequent by-law, the council may sell the part which he has the right to purchase to any other person at the same or a greater price. 3-4 Geo. V. c. 43, s. 492.

A mortgagee of land is an "owner" within the meaning of this section, and entitled to insist upon the right to have the *situs* of a road which is stopped up sold to him as mortgagee subject to redemption by the mortgagor or to have it sold to the mortgagor subject to his mortgage if the mortgagor prefers "having the matter in that shape": Broun v. Bushey (1894), 25 O.R. 612, 617.

A council has no authority to sell the *situs* of a stopped up road without first offering it to the abutting owners at a price fixed by the council. The council is not bound to sell, but, if it determines to do so, it must proceed in accordance with the provisions of the Act: Jones v. Tuckersmith (1915), 33 O.L.R. 634, 23 D.L.R. 569.

493.—(1) Where a highway for the site of which compensation was not paid has been laid out and opened in the place of the whole or any part of an original allowance for road, the owner of the land appropriated for the highway or his successor in title if he owns the land which abuts on such allowance shall be entitled to the soil and freehold of it, and if it has not already been conveyed to him or his predecessor in title, to a conveyance of it.

Where owner of land taken for highway entitled to original road allowance.

(2) Where the land which so abuts is owned by more persons than one each shall be entitled to and to a conveyance of the soil and freehold of that part of the allowance upon which his land abuts to the middle line of the allowance.

When more than one owner.

(3) If the owner of the land appropriated for the highway or his successor in title does not own any land abutting on the allowance and the allowance is sold by the council, he shall be entitled to a part of the purchase money which bears the same proportion to the whole purchase money as the value of the part of the site of the new highway which belonged to him bears to the value of the whole site. 3-4 Geo. V. c. 43, s. 493.

Where owner of land taken owns no land abutting on allowance.

See Pirie v. Parry Sound Lumber Company (1907), 11 O.W.R. 11, (1909) 13 O.W.R. 319, in which it was held that it was not necessary under the corresponding provision which was applicable to the case that the highway should be stopped up before the conveyance of it could be made.

Where the owners of land adjoining original allowances for road laid out roads on their lands which were used as public roads for many years, the original allowances being all the time in their occupation and used and treated as their own property, and there is nothing to raise a presumption that compensation had been paid to them for the roads so laid out, the presumption is that the original road allowances had been taken and used in lieu of the roads laid out by the owners through their lands, and a by-law to open up the original road allowances as of right is invalid: In re Beemer and Grimsby (1885), 8 O.R. 98, (1886) 13 A.R. 225.

In that case In re Burritt and Marlborough (1869), 29 U.C.R. 119, was approved, and Cameron v. Wait (1877), 27 U.C.C.P. 475, (1878) 3 A.R. 175,

(1879) Cassels' Digest 332 (S.C.R.), was distinguished on the ground that in that case the road was not laid out in lieu of the original allowance, nor could it be held that the land for the new road had been appropriated for it without compensation to the owner and that the case did not fall within what is now s. 493 (1).

When person in possession entitled to original allowance.

494.—(1) A person in possession of the whole or any part of an original allowance for road in place of which he or any of his predecessors in title has laid out and opened a new road or street without receiving compensation for the site of it, shall be entitled to the soil and freehold of such allowance or part of it, and if it has not already been conveyed to him or to his predecessor in title to a conveyance of it.

Where several persons in possession.

(2) Where there are more persons than one in such possession each shall be entitled to and to a conveyance of the soil and freehold of that part of the allowance upon which his land abuts to the middle line of the allowance.

Requirement as to assumption of road by corporation.

(3) If the road has not been adopted by by-law of the council or otherwise assumed for public use by the corporation, this section shall not apply until the new road or street is adopted by by-law of the council, and the council by by-law declares that the original allowance is in its opinion useless to the public.

Application of section.

(4) This section shall apply to roads and to streets hereafter laid out and opened and to such as have been heretofore laid out and opened. 3-4 Geo. V. c. 43, s. 494.

Stone or gravel on roads during sleighing.

495. Stone, gravel or other material shall not be put on any highway for the purpose of rebuilding or repairing it during the winter months so as to interfere with the use of sleighs, unless another convenient highway is provided while the rebuilding or repairing is being done. 3-4 Geo. V. c. 43, s. 495.

The words, "unless another convenient highway is provided while the rebuilding or repairing is being done," were added by the Act 3-4 Geo. V. c. 43.

Stopping up highways in unorganized territory.

496.—(1) The Lieutenant-Governor in Council may stop up, alter, widen or divert any highway or part of a highway in a Provisional Judicial District not being within an organized municipality, and may sell or lease the soil and freehold of any such highway or part of a highway which he has stopped up or which in consequence of an alteration or diversion of it no longer forms part of the highway as altered or diverted.

Opening up highways where five per cent. reserved.

(2) The council of a township in unorganized territory surveyed without road allowances, but in which 5 per cent. of the area is reserved for highways, may pass by-laws for opening and making highways where necessary and the provisions of this Act as to compensation for lands taken or injuriously affected by the exercise of the powers conferred by this section shall not apply. 3-4 Geo. V. c. 43, s. 496.

Filing plan of roads in Department of Lands, Forests and Mines.

(3) In cases of deviations from road allowances and of roads laid out where there are no road allowances as provided in subsection 2 the corporation shall cause a plan thereof, so far as the same affects ungranted lands of the Crown, to be made by an Ontario land surveyor and shall file the same in the Department of Lands, Forests and Mines. 61 V. c. 26, s. 3.

PART XXII.

PENALTIES AND ENFORCEMENT OF BY-LAWS.

Power to impose penalties.

497.—(1) By-laws may be passed by the councils of all municipalities and by Boards of Commissioners of Police for imposing penalties not exceeding $50, exclusive of costs, upon every person who contravenes any by-law of the council or of the board passed under the authority of this Act.

Recovery of. Rev. Stat. c. 90.

(2) Every such penalty shall be recoverable under *The Ontario Summary Convictions Act*, all the provisions of which shall apply, except that the imprisonment may be for any term not exceeding six months for the breach of a by-law,

(*a*) Of the council or the Board of Commissioners of Police of a city,

(*b*) Of the council or board of any other municipality for the suppression of houses of ill-fame,

and in all other cases for any term not exceeding twenty-one days. 3-4 Geo. V. c. 43, s. 497.

Any person may prosecute for an infraction of a by-law, although the fine belongs to the corporation: Reg. v. Chapman (1897), 5 B.C.R. 349.

Statutory authority to provide for imprisonment in default of payment of fines imposed for contraventions of by-laws, the imprisonment to cease if and when the fine is paid, does not authorize the passing of a by-law which provides that the imprisonment shall cease when the costs as well as the fine are paid: Ex parte Lon Kai Long (1897), Q.R. 6 Q.B. 301.

Under art. 1046 of the Municipal Code (art. 807 of the new Code) any person of full age may, in his own name, claim the fine imposed by art. 793, and in such a case the affidavit required by art. 5716 R.S.Q. is not necessary: Tourigny v. St. Paul de Chester (1902), 5 Que. P.R. 199.

It is *ultra vires* for a municipal corporation under the sole authority of 57 Vict. c. 50 to pass a by-law requiring the early closing of shops, and imposing for infraction of the by-law a penalty with the alternative of imprisonment, there being no specific provision in its charter authorizing the passing of such a by-law: Coaticook v. Lothrop (1902), Q.R. 22 S.C. 225.

A municipal councillor, who is chairman of the road committee of the council, does not exceed the limits of his duty by causing the snow to be temporarily removed from some of the manholes for the purpose of having the depth of the drains measured: Therrien v. St. Paul (1902), Q.R. 23 S.C. 248.

In this case the plaintiff had been prosecuted for a contravention of a municipal by-law which prohibited the making of any excavation in the streets without the permission in writing of the council and the payment of a fee, the alleged contravention consisting in what is mentioned in the foregoing note of the case, and the action was for malicious prosecution.

Contraventions of by-laws in Quebec may be punished by fine or imprisonment, but not by both for the one offence: Bigaouette v. La Petite Riviere (1904), Q.R. 25 S.C. 220.

A municipal council, having statutory authority to impose a fine not exceeding a stated sum or imprisonment not exceeding a stated number of days, cannot impose a fine and imprisonment in default of payment of the fine: St. Laurent v. Roy (1906), Q.R. 30 S.C. 333.

Recovery of penalties.

498.—(1) Except where otherwise expressly provided, the penalties imposed by or under the authority of this Act or under the authority of a by-law of a municipal council or of a Board of Commissioners of Police passed under the authority of this Act, shall be recoverable and may be enforced under *The Ontario Summary Convictions Act*.

Rev. Stat. c. 90.

Prosecutions.

(2) Prosecutions for offences against sections 138, 142, 187 or 189 shall be heard and determined by a police magistrate or two justices of the peace, and in other respects the provisions of *The Ontario Summary Convictions Act* shall apply.

In Rex v. Durocher (1913), 28 O.L.R. 499, 9 D.L.R. 627, 13 D.L.R. 243, 21 Can. Cr. Cas. 382, it was held that a person charged with having fraudulently put into a ballot box a ballot paper other than that which he was authorized by law to put in, contrary to the provisions of s. 193 (1), cl. (*b*), of 3 Edw. VII. c. 19, might be proceeded against by indictment, there being no provision in the Act as to the procedure to be adopted.

Section 193 (1), cl. (*b*), is now s. 138, cl. (*c*), and provision is now made by subs. 2 as to the procedure to be adopted.

Application of penalties.

(3) Where the prosecution is brought by a peace officer or employee of the corporation or of the local Board of Health, the

whole of the penalty shall belong to the corporation, and in other cases shall belong one-half to the corporation and the other one-half to the prosecutor. 3-4 Geo. V. c. 43, s. 498.

Convictions not invalidated for want of proof of by-law.

499.—(1) A conviction for a contravention of any such by-law shall not be quashed for want of proof of the by-law before the convicting justice, but the Court or a Judge hearing the motion to quash may dispense with such proof or may permit the by-law to be proved by affidavit, or in such other manner as may be deemed proper.

Requirement as to proof.

(2) Nothing in this section shall relieve a prosecutor from the duty of proving the by-law or entitle the justice to dispense with such proof. 3-4 Geo. V. c. 43, s. 499.

Enforcing performances of things required to be done under by-laws.

500. Where a council has authority to direct or require by by-law or otherwise that any matter or thing be done, the council may by the same or by another by-law direct that in default of its being done by the person directed or required to do it, such matter or thing shall be done at his expense, and the corporation may recover the expense incurred in doing it by action, or the same may be recovered in like manner as municipal taxes, (or the council may provide that the expense incurred by it, with interest, shall be payable by such person in annual instalments not exceeding ten years and may, without obtaining the assent of the electors, borrow money to cover such expense by the issue of debentures of the corporation payable in not more than ten years). 3-4 Geo. V. c. 43, s. 500; 5 Geo. V. c. 34, s. 36.

The words in brackets were added by 5 Geo. V. c. 34, s. 36.

Power to restrain by action.

501. Where a building is erected or used or land is used in contravention of a by-law passed under the authority of this Act, in addition to any other remedy provided by this Act, and to any penalty imposed by the by-law, such contravention may be restrained by action at the instance of the corporation. 3-4 Geo. V. c. 43, s. 501.

See notes preceding s. 348 and that section.

PART XXIII.

POLICE VILLAGES.

Formation of.

Formation of police village.

502.—(1) Under and subject to the provisions and conditions hereinafter mentioned, a locality may be erected into a police village by the council of the county in which it is situate, or if it comprises parts of two or more counties by the council of the county in which the larger or largest part of the locality is situate.

Petition of freeholders and tenants required.

By-law erecting village and fixing date of first election, etc.

(2) Where a petition signed by a majority of the freeholders of the locality whose names are entered on the last revised assessment roll and by a sufficient number of the resident tenants of the locality whose names are entered on such roll to make up with such freeholders a majority of the whole number of freeholders and tenants whose names are so entered, praying for the erection of the locality into a police village, is presented to the council, the council, if the locality has a population of not less than 150, and an area of not more than 500 acres, may pass a by-law erecting the locality into a police village to take effect from a day to be named in the by-law, declaring the name which the police village shall bear and its boundaries, fixing a time and place and naming the returning officer for holding the first election of trustees and fixing a time and place for the first meeting of trustees. 3-4 Geo. V. c. 43, s. 502.

See notes to s. 13.

Power of Municipal Board to erect police village on failure of county.

(3) Where a petition has been presented as provided by subsection 2 and is sufficiently signed, and the council of the county does not at its next meeting after the presentation of the petition pass a by-law erecting the police village, application may be made to the Ontario Railway and Municipal Board for an order

erecting the locality described in the petition into a police village, and the board upon being satisfied that the petition has been duly signed and presented to the council, and that the council has neglected to act, and that the locality contains a population of not less than one hundred and fifty and has an area of not more than five hundred acres, and that the convenience of the inhabitants of the locality requires the erection of the police village, may make an order erecting the locality into a police village, the order to take effect at a date to be named therein, declaring the name the police village shall bear and its boundaries, fixing the time and place and naming the returning officer for holding the first election of trustees and fixing the time and place for the first meeting of trustees. 5 Geo. V. c. 34, s. 37.

Annexation of territory to police village.

503.—(1) When the population of a police village exceeds 500, the council of the county by which it was established may, on petition of two-thirds of the freeholders and tenants of the village, whose names are entered upon the last revised assessment roll, and of the majority of the resident freeholders and tenants of the territory proposed to be added, whose names are entered on the last revised assessment roll of the municipality, may by by-law increase the area of the village by adding to it any adjoining land, but not exceeding 20 acres for each additional 100 of its population over 500. 3-4 Geo. V. c. 43, s. 503 (1).

Extension of limits of police village.

(1*a*) In the case of a police village having a population of less than five hundred and an area of less than five hundred acres the council of the county, on petition as required by subsection 1, may by by-law increase the area of such village by adding to it any adjoining land so that the total area shall not exceed five hundred acres. 4 Geo. V. c. 33, s. 22.

(2) Land in another county shall not be included in the increased area without the consent of the council of that county. 3-4 Geo. V. c. 43, s. 503 (2).

504. Subsections 2, 3, 5, 6 and 9 of section 13 shall apply to the proceedings under the next two preceding sections, and the population of the locality shall be determined in case of dispute in such manner and by such means as the council shall determine. 3-4 Geo. V. c. 43, s. 504.

Application of proceedings as to incorporation of village.

Trustees—Election of, etc.

505.—(1) There shall be three trustees for every police village.

Trustees—number of.

(2) The trustees may contract and may sue and be sued, and may pass by-laws by and in the name of the trustees of the police village of (*naming it*) but they shall not be personally liable upon their contracts. 3-4 Geo. V. c. 43, s. 505.

General powers.

506.—(1) Except where other provision is made in this Part and except as provided by subsections 2 to 6, the provisions of Parts 2, 3 and 4, which are applicable to councillors of townships, shall apply *mutatis mutandis* to trustees of police villages.

Application of provisions as to election, etc., of township councillors.

(2) The trustees shall appoint the returning officer and the place within the village for holding the nomination and for the polling for every election except the first.

Appointment of returning officer—nomination and polling.

(3) The clerk of every township, a part of which is comprised in the village, not later than the day before that on which the polling is to take place, shall deliver to the returning officer of the village a copy of so much of the voters' list as relates to the village, attested by his declaration in writing as a true copy thereof.

Duty of clerk of township as to preparing voters' list.

(4) The return of the ballot box provided for by section 122 shall be made,

Return of ballot box.

(*a*) Where the village lies wholly within the township to the clerk of that township;

(*b*) Where the village comprises parts of two or more townships in the same county to the clerk of that county;

(*c*) Where the village comprises parts of two or more townships in different counties to the clerk of the county in which the larger or largest part of the village is situate.

Duties of clerk on receiving ballot box.

(5) The clerk to whom the ballot box is returned shall perform the duties which under sections 126 and 127 are to be performed by the clerk of a municipality.

Qualification of trustee.

(6) No person shall be qualified to be elected a trustee unless he has the prescribed qualification in respect of land situate in the village and resides in or within two miles of the village.

"Resides." See notes to s. 13 (1).

"Two miles." See notes to s. 13 (1).

Qualification of elector.

(7) No person shall be qualified to vote at an election of trustees unless he has the prescribed qualification in the village.

First meeting of trustees.

(8) The first meeting of the trustees after the annual election shall be held at noon on the 3rd Monday in January, or on some date thereafter at noon. 3-4 Geo. V. c. 43, s. 506.

Vacancies—how filled.

507. If a vacancy occurs in the office of trustee the remaining trustees or trustee shall, by writing, appoint a trustee to fill the vacancy. 3-4 Geo. V. c. 43, s. 507.

Appointment of inspecting trustee.

508.—(1) The trustees shall, by writing, appoint one of their number to be inspecting trustee.

Requirement as to filing appointment of inspecting trustee, etc.

(2) Forthwith after the making of an appointment under subsection 1 or under section 507, the writing by which the appointment is made shall be filed with the clerk to whom the ballot box is to be returned as provided by subsection 4 of section 506. 3-4 Geo. V. c. 43, s. 508.

Requisition on township council to raise sums to meet expenditure.

509.—(1) The trustees may at any time before the first day of June in any year by a requisition in writing require the council of the township in which the village is situate to cause to be levied, along with the other rates upon the rateable property in the village, such sum as the trustees deem necessary to defray the expenditure of the trustees for the current year.

Case of village situate in more than one township.

(2) Where the village comprises parts of two or more townships the requisition shall be made on the council of each township for its proportion of the whole amount to be levied as ascertained in the manner provided by section 510.

Limit of rates.

(3) The amount which the trustees may require to be so levied shall not in any year exceed a sum which a rate of one cent in the dollar on the rateable property in the village will provide, but this shall not apply to a rate imposed or to be levied under sections 516, 517, or 519. 3-4 Geo. V. c. 43, s. 509.

Apportionment of rate among townships by assessors.

510.—(1) Where a village comprises parts of two or more townships the proportion of the amount required to be levied in each township shall be determined by the assessors of the townships.

Time for meeting of assessors.

(2) Where a police village is hereafter erected, the assessors shall meet forthwith after the election for the purpose of determining and shall determine the proportion to be levied in each township.

(3) Thereafter and in the case of all other police villages the meeting shall be held in every second year.

(4) Except in the case of a newly erected police village the two years shall be reckoned from the respective times when the last determination was made by the assessors.

Determination when assessors differ.

(5) If the assessors differ, notice of the fact shall be forthwith given to the inspecting trustee, who shall act with the assessors in determining the proportions, and the decision of a majority shall be final and conclusive.

Notice of determination to be given to clerk of township.

(6) The determination of the assessor or of the assessors and the inspecting trustee shall be forthwith communicated to the clerk of each of the townships.

Who to call meeting of assessors.

(7) The meeting of the assessors shall be called by the assessor of the township in which is situate the larger or largest part of the rateable property of the village.

How long determination to govern.

(8) The proportions as determined under this section shall govern until the next determination is to be made as provided by subsection 3. 3-4 Geo. V. c. 43, s. 510.

Reduction of township rates—determination of.

511. The ratepayers of the village shall be entitled to such deduction from the township rate payable by them as may be agreed on between the trustees and the council of the township, or if the village comprises parts of two or more townships, by the councils of the respective townships, or if they are unable to agree as shall be determined by a Judge of the County Court of the county in which the village, or if it comprises* more counties than one, the larger or largest part of the village is situate. 3-4 Geo. V. c. 43, s. 511.

* It is evident that the words "parts of" have been inadvertently omitted.

Commutation of statute labor.

512.—(1) The trustees shall be entitled to have the statute labour to be performed by the ratepayers of the village performed in the village.

When council required to commute.

(2) If the trustees request the council of a township to commute the statute labour payable by the ratepayers in that part of the village which is situate in the township, the council shall provide for such commutation at such rate not exceeding $1 per day, as may be requested by the trustees.

Collection and application of commutation money.

(3) The amount of the commutation money shall be collected by the collector of the township and be placed to the credit of the trustees in the books of the treasurer of the township. 3-4 Geo. V. c. 43, s. 512.

513. The trustees may— Powers of trustees.

(*a*) Construct sidewalks and culverts and make, improve, drain and repair the highways in the village;

The trustees of a police village, not created a body corporate under s. 529, are not a corporation separate from the corporation of the township in which the police village is situate, and the township corporation is liable under s. 460 (1) for default in keeping in repair the highways within the limits of the village, although the want of repair is in respect of a sidewalk constructed by the trustees of the police village: Smith v. Bertie (1913), 28 O.L.R. 330, 12 D.L.R. 623.

(*b*) Make contracts for the supply of light, heat or power by any person to the trustees for the purposes of the village or to the residents thereof;

and do all things necessary for any of such purposes. 3-4 Geo. V. c. 43, s. 513.

514.—(1) The treasurer of a township shall, if he has money of the corporation in hand and not otherwise appropriated, from time to time pay any order of the inspecting trustee or of any two of the trustees to the extent of— Payment by township treasurer of orders of trustees.

(*a*) The sum required by section 509 to be levied by the council of the township and any sum which the council is required by the provisions of this Part to place to the credit of the trustees, although the same have not been then collected;

(*b*) Any money received for license fees under any by-law of the trustees and for penalties for breaches of any such by-law or of sections 524, 525 and 526; and

(*c*) Any money placed to the credit of the trustees under the authority of section 515.

(2) An order shall not be given under this section except for work actually performed or in payment in pursuance of an executed contract. 3-4 Geo. V. c. 43, s. 514. When orders not to be given.

Power of township to pay to trustees part of moneys received for liquor licenses, etc., in villages. Rev. Stat. c. 215.

515. The council of a township in which the whole or a part of a police village is situate may by by-law provide that the whole or any part of the money received by the corporation of the township for licenses issued under *The Liquor License Act* for premises situate in the village or for penalties imposed for offences against that Act committed in the village shall be placed to the credit of the trustees in the books of the treasurer of the township. 3-4 Geo. V. c. 43, s. 515.

Submission of money by-laws for certain purposes.

516.—(1) Upon the application of the trustees the council of a township in which a police village is situate shall submit for the assent of the electors of the village, and if it receives such assent shall pass a by-law for borrowing money for—

(*a*) The construction of sidewalks of cement, concrete, brick or other permanent material;

(*b*) The purchase of fire engines and other appliances for fire protection and the supply of water therefor;

(*c*) Lighting the highways in the village; and

(*d*) Supplying water, light, heat or power to the trustees for the purposes of the village or to the residents thereof;

(*e*) (Acquiring land as a site for and erecting thereon a Police Village Hall).

and for the issue of debentures of the corporation of the township for the money borrowed, payable on the instalment plan, at such time within ten years and in such manner as the trustees may request. 3-4 Geo. V. c. 43, s. 516 (1); 5 Geo. V. c. 34, s. 38 (1); 7 Geo. V. c. 42, s. 23.

The words in brackets were added by 5 Geo. V. c. 34, s. 38 (1).

The word "water" in clause (*d*) was added by 7 Geo. V. c. 42, s. 23.

"Instalment plan." See s. 288 (4).

Special rate.

(2) The special rate for the payment of the principal and interest shall be imposed upon the rateable property in the village.

(3) The money borrowed shall be retained in the hands of the treasurer of the township, and he shall pay out of it the orders of the inspecting trustee or of any two trustees in payment for work actually performed or of an executed contract with respect to the work or service for undertaking which the by-law was passed.

Expenditure of money borrowed.

(4) When the by-law is passed, the trustees may undertake the work or service. 3-4 Geo. V. c. 43, s. 516 (4).

Undertaking of work.

(5) The trustees shall have the control, care and management of the fire engine and appliances, and of the plant and appliances for the supply of light, heat or power, (and of the Police Village Hall). 3-4 Geo. V. c. 43, s. 516 (5); 5 Geo. V. c. 34, s. 38 (2).

Control of fire engines, etc.

The words in brackets were added by 5 Geo. V. c. 34, s. 38 (2).

(6) The trustees shall in each year before the striking of the rate by the council of the township furnish to the clerk a statement showing in detail the amount required to be levied upon the rateable property of the village for the current year for any such work or service which has been undertaken and for the care and maintenance of any fire engine and appliances purchased and for providing water therefor and for the maintenance and operation of the plant and appliances for the supply of light, heat or power (and of the PoliceVillage Hall). 3-4 Geo. V. c. 43, s. 516 (6); 5 Geo. V. c. 34, s. 38 (2).

Statement to be furnished to clerk of township, of amount required to be levied for certain purposes.

The words in brackets were added by 5 Geo. V. c. 34, s. 38 (2).

517.—(1) The trustees may, with the consent of the council of the township in which the village is situate expressed by by-law or resolution, purchase fire engines and appliances for fire protection at a cost not exceeding $3,000, and pay therefor in instalments within ten years.

Purchase of fire engines and appliances with consent of township council.

(2) Upon the purchase being made the council of the township shall pass a by-law for raising the amount of the purchase money

Township to pass debenture by-law.

by the issue of debentures of the corporation of the township on the instalment plan, payable within ten years.

Special rate.

(3) The special rate imposed for the payment of the debentures shall be imposed upon the rateable property in the village.

Assent of electors not required.

(4) The assent of the electors to the by-law shall not be necessary.

(5) Subsections 5 and 6 of section 516 shall apply to a fire engine and appliances purchased under the authority of this section. 3-4 Geo. V. c. 43, s. 517.

Agreement for use by township of fire engine.

518. The trustees may contract with the corporation of a township in which the whole or any part of the village is situate for the use by the corporation of a fire engine and appliances purchased under the authority of this Part upon such terms as to payment for the use of them and otherwise as may be agreed upon. 3-4 Geo. V. c. 43, s. 518.

S. 518*a* was repealed by 7 Geo. V. c. 20, s. 7 (2), and a somewhat similar provision added to s. 19 of *The Power Commission Act* by 7 Geo. V. c. 20, s. 7 (1), as follows:—

(4) Where the trustees of a police village have entered into a contract with the Commission for the supply of electrical power or energy and have heretofore constructed, purchased or acquired or hereafter construct, purchase or acquire works for distributing electrical power or energy, and the trustees of the police village desire to extend or improve such works, they may apply to the council of the township for the passing of a by-law for the issue of debentures for such extension or improvement, and the council may pass the necessary by-law for borrowing such further sums as may be necessary for such extension or improvement and for levying by an annual special rate upon the ratable property in the police

village, the sums required for the payment of the debentures issued for the extension or improvements.

(*a*) The by-law shall be approved by the Commission before the final passing thereof, but shall not require the assent of the electors.

(*b*) Such approval may be given if it is shown to the satisfaction of the Commission that the extension is necessary or desirable and if sufficient additional revenue will be derived therefrom to meet the annual payments in respect of the debt and the interest thereon.

Establishment of Parks, Gardens, etc.

Acquiring land for parks, exhibitions, etc.

519.—(1) Upon the petition of three-fourths of the electors qualified to vote upon money by-laws the council of a township in which a police village is situate may pass a by-law for acquiring land within or without the limits of the village for a highway or for a public park, garden or place for exhibitions, and for the erection thereon of such buildings and fences as the council may deem necessary for the purposes of such highway, park, garden or place for exhibitions and may dispose of such land when no longer required for such purposes.

Control and management of parks, etc.

(2) The trustees shall have the care, control, and management of such highway, park, garden or place.

Powers of township council as to levying cost of parks, etc.

(3) The council of the township may provide that,

(*a*) The money required for the purpose mentioned in subsection 1 shall be levied upon the rateable property in the village, or,

(*b*) Such money be raised by the issue of debentures of the corporation of the township on the instalment plan payable within 10 years.

Special rates.

(4) The by-law shall impose the special rate for the payment of the debentures upon the rateable property in the village.

Statement as to amount required for maintenance of parks, etc.

(5) The trustees shall annually before the striking of the rate for the year by the council of the township, furnish to the council a statement showing in detail the amount required to be levied for the current year for managing and maintaining the highway, park, garden or place of exhibitions, and the same shall be levied upon the land in the village.

Assent of electors not required.

(6) The assent of the electors to a by-law passed under this section shall not be necessary. 3-4 Geo. V. c. 43, s. 519.

Trustees to pass money by-laws where village situate in two or more townships.

520.—(1) Where the village comprises parts of two or more townships a by-law for the purposes mentioned in sections 516, 517 and 519 may be passed by the trustees, with the assent of the electors of the village qualified to vote on money by-laws; and for the purposes of such by-laws the trustees shall have all the powers of the council of a village, except the power to issue the debentures for the payment of the principal and interest.

Fixing proportion of debt to be borne by parts of village.

(2) The by-law shall fix the proportion of the debt, for payment of which the special rate is to be imposed, which is to be borne by the part of the village situate in each township, and such proportion shall be the same as that in which the annual sum to be levied as provided by section 509 is to be levied according to the then last determination of the assessors or of the assessors and the inspecting trustee under section 510.

Certified copy for each township.

(3) If the by-law receives the assent of the electors, the trustees, after passing it, shall serve a certified copy of it upon the clerk of each of the townships.

By-law of township for raising money.

(4) The council of each township shall forthwith thereafter pass a by-law for raising the amount which is to be borne by that part of the village situate in the township by the issue of debentures of the corporation of the township, payable as provided by the

by-law of the trustees, and it shall not be necessary that such by-law shall receive the assent of the electors or impose any rate for the payment of the debentures.

Special rates.

(5) The special rates imposed by the by-law of the trustees shall be levied and collected by the councils of the townships within which the property upon which they are imposed is situate. 3-4 Geo. V. c. 43, s. 520.

Appointment of constable.

521.—(1) The trustees may appoint a constable for the village who shall have the same powers and perform the same duties within the village as a constable appointed by the council of a village.

Salary.

(2) The constable may be paid by salary or may keep for his own use the fees of his office as the trustees may determine.

When fees of constable to belong to village.

(3) Where the constable is paid by salary the trustees may require that the fees of his office be paid to the treasurer of the township in which the village is situate or where the village comprises parts of two or more townships to the treasurer of any or either of them for the use of the village. 3-4 Geo. V. c. 43, s. 521.

Special Powers.

Special powers of trustees.

522.—(1) The trustees shall have the like power to pass by-laws as is conferred on the council of a village with respect to the matters under the following sub-headings,—

(*a*) Driving or riding on roads and bridges; S. 398, pars. 8, 9.
(*b*) Free libraries; S. 398, par. 17.
(*c*) Sidewalks—Vehicles on; S. 398, par. 37.
(*d*) Pounds; S. 399, pars. 52-55.
(*e*) Snow and Ice, removal of; S. 399, pars. 61, 62.
(*f*) Sidewalks—Horses and cattle upon; S. 400, par. 44.
(*g*) Spitting on sidewalks; S. 400, par. 46.

S. 400, par. 49. (*h*) Traffic on highways, etc., driving of cattle, etc.;
See as to this 7 Geo. V. c. 48, s. 3.

S. 419, par. 2. (*i*) Tobacconists;

S. 420, par. 1. (*j*) Bagatelle and billiard tables; and

S. 420, par. 3. (*k*) Exhibitions, places of amusement, etc.

Fixing amount of license fee. (2) Where power is conferred to license, the license fee shall be fixed by the trustees, and subsections 1, 3, 4, and 5 of section 253 shall apply.

When by-law of township not to apply to village. (3) While a by-law passed under the authority of subsection 1 is in force, no by-law of the council of the township applicable to the same subject matter shall apply to or be in force in the village. 3-4 Geo. V. c. 43, s. 522.

Authentication of by-laws. **523.**—(1) Every by-law of the trustees shall be signed by at least two of them.

Certified copies to be sent to clerk of township. (2) A certified copy of every such by-law shall within seven days after it is passed be transmitted to the clerk of every township a part of which is comprised in the village. 3-4 Geo. V. c. 43, s. 523.

Prevention of Fire.

For providing ladders, etc. **524.**—(1) Every proprietor of a house more than one storey high shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, under a penalty of $1 for every omission; and a further penalty of $2 for every week for which such omission continues. Penalty.

Fire buckets. (2) Every householder shall provide himself with two buckets fit for carrying water in case of accident by fire, under a penalty of $1 for each bucket not so provided. Penalty.

As to furnaces, etc. (3) No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, under a penalty not exceeding $2 for non-compliance. Penalty.

(4) No person shall pass a stove-pipe through a wooden or lathed partition or floor, unless there is a space of four inches between the pipe and the woodwork nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there shall be at least ten inches in the clear between any stove and any lathed partition or woodwork, under a penalty of $2. Stove pipes, etc. Penalty.

(5) No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp, unless it is well enclosed in a lantern, nor with a lighted pipe or cigar, nor with fire not properly secured, under a penalty of $1. Lights in stables, etc. Penalty.

(6) No person shall light or have a fire in a wooden house or outhouse, unless such fire is in a brick or stone chimney, or in a stove of iron or other metal, properly secured, under a penalty of $1. Chimneys. Penalty.

(7) No person shall carry fire or cause fire to be carried into or through any street, lane, yard, garden or other place, unless such fire is confined in a copper, iron or tin vessel, under a penalty of $1 for the first offence, and of $2 for every subsequent offence. Securing fire carried through streets, etc. Penalty.

(8) No person shall light a fire in a street, lane or public place under a penalty of $1. Lighting fires on streets. Penalty.

(9) No person shall place hay, straw or fodder, or cause the same to be placed, in a dwelling house, under a penalty of $1 for the first offence, and of $5 for every week the hay, straw or fodder is suffered to remain there. Hay, straw, etc. Penalty.

(10) No person, except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders in any wooden vessel, box or thing not lined or doubled with sheet-iron, tin or copper, so Ashes, etc. Penalty.

as to prevent danger of fire from such ashes or cinders, under a penalty of $1.

Lime. Penalty.

(11) No person shall place or deposit any quick or unslacked lime in contact with any wood of a house, outhouse or other building, under a penalty of $1, and a further penalty of $2 a day until the lime has been removed, or is secured, so as to prevent any danger from fire, to the satisfaction of the inspecting trustee.

Charcoal furnaces. Penalty.

(12) No person shall erect a furnace for making charcoal of wood, under penalty of $5. 3-4 Geo. V. c. 43, s. 524.

Gunpowder.

Gunpowder, how to be kept. Penalty.

525.—(1) No person shall keep or have gunpowder for sale, except in boxes of copper, tin or lead, under a penalty of $5 for the first offence, and $10 for every subsequent offence.

Not to be sold at night.

(2) No person shall sell gunpowder, or permit gunpowder to be sold in his house, storehouse or shop, outhouse or other building, at night, under a penalty of $10 for the first offence, and of $20 for every subsequent offence. 3-4 Geo. V. c. 43, s. 525.

Nuisances.

Certain nuisances prohibited.

526. No person shall throw, or cause to be thrown, any filth or rubbish into a street, lane or public place, under a penalty of $1, and a further penalty of $2 for every week for which he neglects or refuses to remove the same after being notified to do so by the inspecting trustee or by some other person authorized by him. 3-4 Geo. V. c. 43, s. 526.

Trustees required to prosecute offenders.

527.—(1) It shall be the duty of the trustees to see that the provisions of the next preceding three sections are not contravened, and that offenders are prosecuted for breaches of them.

Penalty for neglect to prosecute.

(2) Any trustee who wilfully neglects or omits to prosecute an offender against any of the provisions of sections 524, 525 or 526,

when requested so to do by a resident householder of the village who offers to adduce proof of the offence, and a trustee who wilfully neglects or omits to fulfil any other duty imposed on him by this Part, shall incur a penalty of $5. 3-4 Geo. V. c. 43, s. 527.

Penalties—how recoverable.

528. The penalties imposed by or under the authority of this Part shall be recoverable under *The Ontario Summary Convictions Act*, all of the provisions of which shall apply except that proceedings for the recovery of penalties for contraventions of sections 524 to 527 shall be commenced within ten days after the commission of the offence, or if it is a continuing offence, within ten days after it has ceased and not afterwards. 3-4 Geo. V. c. 43, s. 528.

Rev. Stat. c. 90.

Incorporation of Trustees.

Incorporation of Board of Trustees.

529.—(1) Where a police village has a population of not less than 500, the trustees may be created a body corporate and when incorporated the corporation shall be styled "The Board of Trustees of the Police Village of ———" (*naming it*).

Procedure as to incorporation of board.

(2) The provisions of this Part as to the erection of a police village shall apply *mutatis mutandis* to an application for the incorporation of the trustees of a police village with the exception that the petition for incorporation shall be signed by not less than 50 resident freeholders of the village whose names are entered on the last revised assessment rolls of the municipality or municipalities of parts of which the village is composed. 3-4 Geo. V. c. 43, s. 529.

"Resident freeholders." See notes to s. 13 (1).

Appointment of chairman and secretary.

530.—(1) At its first meeting in each year the board shall appoint one of its members to be the chairman, and shall also appoint a secretary.

Presiding officer.

(2) The chairman shall, if present, preside at all meetings of the board and in his absence the board shall appoint one of its

members to act as chairman during such absence. 3-4 Geo. V. c. 43, s. 530.

Authentication of by-laws.

531.—(1) The by-laws of the board shall be signed by the chairman or acting chairman and shall be sealed with its seal.

(2) The provisions of this Act as to the proof of by-laws of a council shall apply to the by-laws of the board. 3-4 Geo. V. c. 43, s. 531.

See s. 258.

Repair and maintenance of improvements and works.

532. The expenses of repairing and maintaining all works, improvements and services undertaken by the board under the authority of this Act, shall be borne by the board, and such expenses shall be levied and collected by the councils of the townships on the requisition in writing of the board, in like manner as the money to be levied as provided by section 509. 3-4 Geo. V. c. 43, s. 532.

Remedy over of township against board for damages occasioned by non-repair.

533.—(1) If the board makes default in maintaining and keeping in repair any such work, and the corporation of a township becomes liable under section 460 for damages suffered by or occasioned to any person in consequence of such default, the corporation shall be entitled to the remedy over against the board provided for by section 464.

Special rate for collection of amount of damages.

(2) The amount required to satisfy the liability of the board shall be levied and collected by a special rate on the rateable property in the village, and it shall be the duty of the board to make a requisition in writing to the council of the township to levy and collect the same.

Apportionment of special rate.

(3) Where the village comprises parts of two or more townships the special rate shall be apportioned between the townships in the manner provided by section 510, and shall be levied and collected by the councils thereof in accordance with the requisition of the board. 3-4 Geo. V. c. 43, s. 533.

534.—(1) The board shall have the like powers as the council of a village for constructing, purchasing, improving, extending, maintaining, managing and conducting water, light, heat, power and gas works.

Power to construct water, light, heat, power and gas works.

See the Public Utilities Act, R.S.O., c. 204.

(2) A copy of every by-law passed under the authority of subsection 1, shall be filed with the clerk of every township in which any part of the village is situate.

Copy of by-law to be filed with township clerk.

(3) Where the village is situate in one township, the council of that township shall levy and collect the amount required to be raised under any such by-law by a special annual rate upon the rateable property in the village, and where the village comprises parts of two or more townships, the council of each township shall levy and collect the proportion of the amount to be raised by it by a special annual rate on the rateable property in that part of the village situate in such township.

Special rates.

(4) The proportion to be raised by each township shall be determined under the provisions of section 510. 3-4 Geo. V. c. 43, s. 534.

Proportion of each township.

See The Power Commission Act, 1917, ss. 7 (1), quoted after s. 518, and s. 9, quoted in notes to s. 400, par. 3.

535.—(1) The powers expressly conferred on boards of trustees of police villages shall be in addition to the powers conferred by this Part on trustees of a police village, and except where other provision is made by this Part with respect to such boards all the provisions of this Part relating to trustees of police villages shall apply to such boards.

Board to have all power of trustees of a police village.

(2) Section 497, subsection 2 of section 498, and sections 499 and 500 shall apply *mutatis mutandis* to by-laws passed under the authority of this Part by a board of trustees of a police village. 3-4 Geo. V. c. 43, s. 535.

Power to impose penalties, etc.

PART XXIV.

MISCELLANEOUS.

Forms of by-laws, notices, etc.

536. Where the forms therefor are not prescribed by this Act the Municipal Board may approve of forms of by-laws, notices and other proceedings to be passed, given, or taken under or in carrying out the provisions of this Act, and every by-law, notice or other proceeding which is in substantial conformity with the form so approved, shall not be open to objection on the ground that it is not in accordance with the provisions of this Act applicable thereto, but the use of such forms shall not be obligatory. 3-4 Geo. V. c. 43, s. 536.

Repeal of 3 Edw. VII. c. 19, s. 566.

537. The Lieutenant-Governor in Council may by proclamation declare that section 566 of *The Consolidated Municipal Act*, 1903, shall cease to have effect on and from a day to be named in such proclamation and on and from that day the section shall be deemed to be repealed.

No proclamation has yet been issued under this Section.

Section 566 of *The Consolidated Municipal Act*, 1903, contains what are popularly known as the "Conmee Clauses."

FORM 1.

DECLARATION OF INCORPORATION.

TOWNSHIPS IN UNORGANIZED TERRITORY.

I, Judge of the District Court of the Provincial Judicial District of hereby certify:

1. That the inhabitants of the township of in the said district (or of that part of the said district described as follows [*describing it*]), or of the townships of and in the said district (*as the case may be*), are incorporated as a township municipality (*or* as a union of townships municipality, *as the case may be*), by the name of the Corporation of the township of (*or* of the united townships of , *as the case may be*).

2. That was elected reeve and were elected councillors for the municipality.

3. The first meeting of the council shall be held on the day of at .

Dated at this day of , 19 .

3-4 Geo. V. c. 43, Form 1.

FORM 2.

DECLARATION OF QUALIFICATION BY CANDIDATE.

I, *A. B.*, declare that

1. I am a British subject by birth (*or* naturalization), and not a citizen or subject of any foreign country.

2. I have to my own use and benefit in my own right (or my wife has, *as the case may be*) as owner (*or* tenant, *as the case may be*),

such estate as qualifies me for the office of (*naming the office*) for which I am a candidate (*a*), (*d*).

3. Such estate is (*state the nature of the estate as a legal estate of freehold or otherwise, as the case may be*) in (*designate the land by its local description or otherwise*).

4. The land is assessed in my own name (*or* in the name of my wife, *as the case may be*) on the last revised assessment roll of this municipality at the sum of $ (*b*) which exceeds by at least $ the amount of all liens, charges and encumbrances thereon (*c*).

5. I am not liable for any arrears of taxes to the corporation of this municipality.

6. There are no arrears of taxes against the land in respect of which I qualify.

Declared before me at
the day of
19
A. B.

(*a*) *Where the candidate qualifies under subsection* 2 *of section* 52, *substitute for paragraphs* 2 *and* 4 *the following:*

2. I had to my own use and benefit (*or* my wife had, *as the case may be*), as owner (*or* tenant, *as the case may be*), at the time of the return of the last assessment roll of this municipality such an estate in land rated on that assessment roll in my own name (or in the name of my wife *as the case may be*), as would have qualified me for the office of (*naming it*).

4. I have (*or* my wife has, *as the case may be*) an estate in land (*describing it*) assessed on the last revised assessment roll of this municipality for $———, which exceeds by at least $——— the amount of all liens, charges and encumbrances thereon, and is sufficient to qualify me for such office if I (*or* my wife, *as the case may be*) had been assessed for it.

(*b*) *Where the candidate qualifies on a leasehold estate omit the remainder of this paragraph.*

(*c*) *Where the candidate qualifies under clause* (*e*) *of subsection* 1 *of section* 52, *substitute for paragraph* 4 *the following:*

4. The land is assessed in my own name (*or* in the name of my wife, *as the case may be*) on the last revised assessment roll of this municipality for at least $2,000, and I am in actual occupation of such land.

(*d*) *In the case of a person elected as a member of a township council substitute for the words* "for which I am a candidate" *the words* "to which I was elected," *and change paragraphs* 2, 5 *and* 6 *so as to refer to the time of the election.*

3-4 Geo. V. c. 43, Form 2. 7 Geo. V. c. 42, s. 24.

FORM 3.

BALLOT PAPER FOR CITIES AND TOWNS.

FORM FOR MAYOR.

Election for the Members of the Municipal Council of the City of , Ward No. , Polling Subdivision No. , day of January, 19 .	*FOR MAYOR.*	**ALLAN.** Charles Allan, of King Street, in the City of Toronto, Merchant.
		BROWN. William Brown, of the City of Toronto, Banker.

FORM FOR REEVE AND DEPUTY IN TOWNS.

Election for the Members of the Municipal Council of the Town of , Ward No. , Polling Subdivision No. , day of January, 19 .	*FOR DEPUTY-REEVE.*	**CLITHEROE.** Albert Clitheroe, of the Town of Galt, Baker.
		HUGHES. David Hughes, of the Town of Galt, Tinsmith.
	FOR REEVE.	**FARQUHARSON.** Robin Farquharson, of the Town of Galt, Builder.
		MacPHERSON. Roderick MacPherson, of the Town of Galt, Printer.

FORM FOR ALDERMEN OR COUNCILLORS.

Election for the Members of the Municipal Council of the City of , Ward No. , Polling Subdivision No. , day of January, 19 .	*FOR ALDERMAN (or COUNCILLOR).*	**ARGO.** James Argo, of the City of Toronto, Gentleman.
		BAKER. Samuel Baker, of the City of Toronto, Baker.
		DUNCAN. Robert Duncan, of the City of Toronto, Printer.

[*Note:—In the case of cities and towns where the Aldermen or Councillors are elected by general vote the form above given is to be adapted to suit the case.*] 3-4 Geo. V. c. 43, Form 3.

FORM 4.

BALLOT PAPER FOR VILLAGES.

Election of Members of the Municipal Council of the of in the County of , Polling Subdivision No. , day of January,	*FOR REEVE.*	**BROWN.** John Brown, of the Village of Weston, Merchant.
		ROBINSON. George Robinson, of the Village of Weston, Physician.
	FOR COUNCILLORS.	**BULL.** John Bull, of the Village of Weston, Butcher.
		JONES. Morgan Jones, of the Village of Weston, Grocer.
		McALLISTER. Allister McAllister, of the Village of Weston, Tailor.
		O'CONNELL. Patrick O'Connell, of the Village of Weston, Milkman.

3-4 Geo. V. c. 43, Form 4.

FORM 5.

BALLOT PAPER FOR TOWNSHIPS.

Election of Members of the Municipal Council of the Township of in the County of

FOR REEVE.	**ALLSOPP.** Albert Allsopp, of the Township of York, Brewer.
	BURTON. Henry Burton, of the Township of York, Farmer.
FOR FIRST DEPUTY-REEVE.	**BANKS.** John Banks, of the Township of York, Blacksmith.
	CALDWELL. Henry Caldwell, of the Township of York, Market Gardener.
FOR SECOND DEPUTY-REEVE.	**CONNOR.** Patrick Connor, of the Township of York Cattle Dealer.
	DAVIDSON. Thomas Davidson, of the Township of York, Milkman.
FOR THIRD DEPUTY-REEVE.	**EDWARDS.** Daniel Edwards, of the Township of York, Miller.
	FERGUSON. George Ferguson, of the Township of York, Nurseryman.
FOR COUNCILLORS.	**BRITTON.** James Britton, of the Township of York, Farmer.
	LLOYD. David Lloyd, of the Township of York, Farmer.
	MACDONALD. Philip Macdonald, of the Township of York, Agent.
	O'LEARY. Dennis O'Leary, of the Township of York, Farmer.

3-4 Geo. V. c. 43, Form 5.

Note.—Where the election is to fill a vacancy, the ballot papers are to contain only so much of the form as is required; and the counterfoils shall bear, instead of the words appearing on the form, the words "Election of........, to fill a vacancy in the office of.........., Ward No. ......, Polling Subdivision No. ...., day of........, 19...."

Where controllers, or commissioners, or members of the Board of Education are to be elected, the ballot papers are to be similar in form.

FORM 6.

Directions for the Guidance of Voters in Voting.

The voter will go into one of the compartments, and with the pencil provided in the compartment, place a cross, thus **X** on the right hand side, opposite the name or names of the candidate or candidates for whom he votes or at any other place within the division which contains the name or names of such candidate or candidates.

The voter will fold up the ballot paper so as to show the name or initials of the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) signed on the back, and leaving the compartment will, without showing the front of the paper to any person, deliver such ballot paper so folded to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter votes for more candidates for any office than he is entitled to vote for, his ballot paper will be void as far as relates to that office, and will not be counted for any of the candidates for that office.

If the voter places any mark on his ballot paper by which he may afterwards be identified, or if the ballot paper has been torn, defaced, or otherwise dealt with by the voter so that he can thereby be identified, it will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the Officer, he will be subject to imprisonment for any term not exceeding 6 months, with or without hard labour.

In the following forms of ballot paper, given for illustration, the candidates are: For Mayor, Jacob Thompson and Robert Walker; for Reeve, George Jones and John Smith; for Deputy Reeve, Thomas Brown and William Davis; for Councillors, John Bull, Morgan Jones, Allister McAllister and Patrick O'Connell; and the elector has marked the first ballot paper in favour of Jacob Thompson for Mayor, the second ballot paper in favour of George Jones for Reeve, the third ballot paper in favour of William Davis for Deputy Reeve, and the fourth ballot paper in favour of John Bull and Patrick O'Connell for Councillors.

○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○	Election for the Members of the Municipal Council of the of , Ward No. , day of January, 19 .	*FOR MAYOR.*	**THOMPSON.** Jacob Thompson, of the Town of Barrie, Merchant. X
			WALKER. Robert Walker, of the Town of Barrie, Physician.

○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○ ○○○○○	Election for the Members of the Municipal Council of the of , Ward No. , day of January, 19 .	*FOR REEVE.*	**JONES.** George Jones, of the Town of Barrie, Barrister. X
			SMITH. John Smith, of the Town of Barrie, Banker.

○ ○ ○ ○ ○	Election for the Members of the Municipal Council of the of , Ward No. , day of January, 19 .	*FOR DEPUTY REEVE.*	**BROWN.** Thomas Brown, of the Town of Barrie, Grocer.
			DAVIS. William Davis, of the Town of Barrie, Jeweller. **X**

○ ○ ○ ○ ○	Election for the Members of the Municipal Council of , the of , Ward No. Polling Subdivision No. , day of January, 19 .	*FOR COUNCILLORS.*	**BULL.** John Bull, of the Town of Barrie, Butcher. **X**
			JONES. Morgan Jones, of the Town of Barrie, Grocer.
			McALLISTER. Allister McAllister, of the Town of Barrie, Tailor.
			O'CONNELL. Patrick O'Connell, of the Town of Barrie, Milkman. **X**

3-4 Geo. V. c. 43, Form 6.

FORM 7.

FORM IN WHICH POLL BOOK TO BE FURNISHED TO DEPUTY RETURNING OFFICERS IS TO BE PREPARED.

Column for mark indicating that the voter has voted.	NAMES OF THE VOTERS.	Description of Property in respect of which the voter is entitled to vote.	Freeholder, Tenant, Farmer's Son or Income Voter.	Residence of Voter.	Occupation.	Objections.	Sworn or affirmed.	Refused to swear or affirm.	Mayor and Reeve.	Deputy Reeves.	Councillors.	REMARKS.

NOTE.—In Cities, the column above headed "Mayor and Reeve" is to be headed "Mayor"; and the column above headed "Councillors" is to be headed "Aldermen." In Townships and Villages, the column above headed "Mayor and Reeve" is to be headed "Reeve." Where Controllers or Commissioners or Members of a Board of Education are to be elected, columns for these are to be added with appropriate headings.

3-4 Geo. V. c. 43, Form 7.

FORM 8.

CERTIFICATE AS TO ASSESSMENT ROLL AND VOTERS' LIST.

Election to the Municipal Council of the
of 19

I , *A. B.*, Clerk of the Municipality of in the county of hereby certify that the assessment roll for this municipality upon which the voters' list to be used at this election is based was finally revised on the day of 19 , and that the last day for making complaint to the Judge with respect to the list was the day of 19

Dated this day of 19

A. B.,
[Seal.] Clerk.

3-4 Geo. V. c. 43, Form 8.

FORM 9.

OATH TO BE ADMINISTERED TO A VOTER.

You swear (*a*)

1. That you are the person named or intended to be named by the name of in the list (*or* supplementary list) of voters (*b*) now shown to you.

2. That you are a natural born (*or* naturalized) subject of His Majesty, and of the full age of twenty-one years.

3. That you are not a citizen or subject of any foreign country.

4. (*In the case of an unmarried woman or widow*) That you are unmarried (*or* a widow, *as the case may be*).

5. That (*c*)

6. (*In the case of a municipality not divided into wards*) That you have not voted before at this election at this or any other polling place.

7. (*Where the municipality is divided into wards and the election is not by general vote*) That you have not voted before at this

election at this or any other polling place in this ward, (*or if the election is by general vote*) that you reside in this polling subdivision (*or* are not entitled to vote in the polling subdivision in which you reside *or* are not resident within the municipality, *as the case may be*), and that you have not voted before or elsewhere at this election, and will not vote elsewhere at this election (*d*).

8. That you have not directly or indirectly received any reward or gift, nor do you expect to receive any, for the vote which you tender.

9. That you have not received anything, nor has anything been promised you, directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected with this election.

10. That you have not directly or indirectly paid or promised anything to any person to induce him to vote or to refrain from voting at this election.

(*a*) *If the voter is a person who may by law affirm in civil cases, substitute for* "swear," "solemnly affirm."

(*b*) *In the case of a new municipality in which there has not been any assessment roll, instead of referring to the list of voters, the oath is to state the land in respect of which the person claims to vote.*

(*c*) *In the case of a person claiming to vote in respect of a freehold estate, insert here,* "At the date of this election you are in your own right, or your wife is, a freeholder within this polling subdivision (*or, where the ward is not divided into polling subdivisions,* "within this ward");

In the case of a person claiming to vote in respect of a leasehold estate, insert here "That you were (*or* your wife was) actually and truly in good faith possessed to your (*or* her) own use and benefit as tenant of the land in respect of which your name is entered on such list. That you are (*or* your wife is) a tenant within this municipality, and that you have been a resident within it for one month next before this election;" (*or, in the case of a new municipality for which there is no assessment roll, instead of the* *words* "have been a resident within it for one month next before the election," *insert* "You are a resident of this municipality."

(*If the person claims to vote in respect of income, insert here*)*:* That on the day of 19 (*the day certified by the clerk as the date of the final revision of the assessment roll upon which the voters' list is based, or, at the option of the voter, the day certified by the clerk as the last day for making complaint to the Judge with respect to such list*) you were, and thenceforth have been continuously, and still are, a resident of this municipality, and that at that date and for the twelve months previously you were in receipt of an income from your trade, office, calling or profession of not less than four hundred dollars;

In the case of a person claiming to vote as a farmer's son, insert here That on the day of 19 , (*the day certified by the clerk as the date of the final revision of the assessment roll upon which the voters' list is based, or, at the option of the voter, the day certified by the clerk as the last day for making complaint to the Judge with respect to such list*) A. B. (*naming him or her*) was actually, truly and in good faith possessed to his (*or* her) own use and benefit as owner (*or* as tenant under a lease the term of which was not less than five years), as you verily believe, of the land in respect of which your name is entered on the voters' list; That you are a son (*or* a stepson) of the said A. B., and that you resided on the said land for twelve months next before the said day, and were not absent during that period except temporarily, and for not more than six months in all, and that you are still a resident of this municipality.

Where the voter or his wife is a leaseholder, and the voting is on a by-law under section 51 *of The Local Improvement Act,* add

That you have (*or* your wife has), by the lease under which you (*or* she) holds, contracted to pay all municipal taxes, including local improvement rates.

(*d*) *If the by-law is for creating a debt substitute for paragraph* 7.

(*In the case of a municipality divided into wards, if the by-law is one for creating a debt*): 7. That you have not voted before on the by-law at this or any other polling place in this ward; (*or in the case of any other by-law*): 7. That you reside in this polling subdivision *or* are not entitled to vote in the polling subdivision in which you reside, *or* are not resident within the municipality (*as the case may be*), and that you have not voted before elsewhere, and will not vote elsewhere on the by-law.

(*Where the voter or his wife is a leaseholder, and the voting is on a by-law for creating a debt, add the following paragraph:*)

11. That the lease under which you hold (*or* your wife holds) extends for the period for which the debt or liability to be created by the by-law is to run, and you have (*or* your wife has) contracted by the lease to pay all municipal taxes in respect of the land other than special assessments for local improvements.

Where the voting is on a by-law substitute for the words "at this election" *the words* "on the by-law"; *and where the voting is on a question, substitute for the words* "at this election" *the words* "on the question."

3-4 Geo. V. c. 43, Form 9.

NOTE.—*Where the voter is the nominee of a corporation the oath shall state the fact, and that the voter has not voted before on the by-law "at this or any other polling place," adding if the municipality is divided into wards* "in this ward," *and shall also contain paragraphs* 1, 8, 9 *and* 10.

Paragraph 4 *should be eliminated owing to the change in the law made by 7 Geo. V. c. 43, which confers on women the same right to vote as is possessed by man.*

The other words referring to "wife" remain because a wife qualified to vote may authorize her husband to vote in her stead. 7 Geo. V. c. 43.

FORM 10.

DECLARATION OF INABILITY TO READ.

I, *A. B.*, of , being numbered on the voters' list, for polling subdivision No. , in the City (*or as the case may be*) of , being a legally qualified elector for the City (*or as the case may be*) of declare that I am unable to read (*or* that I am from physical incapacity unable to mark a ballot paper, *or* that I object on religious grounds to mark a ballot paper, *as the case may be*).

(*A. B.*, His **X** Mark.)

Dated this day of , 19 .

3-4 Geo. V. c. 43, Form 10.

NOTE.—*If the person objects on religious grounds to mark a ballot paper, the declaration may be made orally and to the above effect.*

FORM 11.

CERTIFICATE TO BE WRITTEN UPON OR ANNEXED TO THE DECLARATION OF INABILITY TO READ.

I, *C. D.*, Deputy Returning Officer for polling subdivision No. for the City (*or as the case may be*) of , hereby certify that the above (*or* within) declaration, having been first read to the above (*or* within) named *A. B.*, was signed by him in my presence with his mark.

C. D.

Dated this day of , 19 .

3-4 Geo. V. c. 43, Form 11.

FORM 12.

OATH OF POLL CLERK OR MESSENGER WHERE THE DEPUTY RETURNING OFFICER IS UNABLE TO DELIVER THE BALLOT BOX TO THE RETURNING OFFICER.

I, swear that I am the person to whom Deputy Returning Officer for Polling Subdivision No. , of the of entrusted the ballot box for the said polling subdivision to be delivered to the Clerk; that the ballot box which I delivered to the Clerk this day is the ballot box I so received; that I have not opened it and that it has not been opened by any other person since I received it from the Deputy Returning Officer.

Sworn before me at
this
day of 19 .

3-4 Geo. V. c. 43, Form 12.

FORM 13.

OATH OF DEPUTY RETURNING OFFICER AFTER CLOSING OF THE POLL.

I, *A. B.*, Deputy Returning Officer for Polling Subdivision No. , of the City (*or as the case may be*) of in the County , swear that, to the best of my knowledge and belief, the poll book kept for the said polling place under my direction has been kept correctly, that the total number of votes polled according to the said poll book is , and that it contains a true and exact record of the votes given at the said polling place, as the said votes were taken thereat; that I have correctly counted the votes given for each candidate, in the manner by law provided, and performed all duties required of me by law, and that the statement, voters' list, poll book, packets containing ballot papers, and other documents required by law to be returned by me to the Clerk, have been faithfully and truly prepared and placed in the ballot box, and are contained in the ballot box returned by me to the Clerk, which was locked and sealed by me, in accordance with the provisions of *The Municipal Act*, and remained so locked and sealed while in my possession.

Sworn before me at
in the County of
this day of , 19

A. B.

3-4 Geo. V. c. 43, Form 13.

FORM 14.

OATH OF SECRECY.

I, *A. B.*, swear that I will not at this election disclose to any person the name of any person who has voted, and that I will not in any way unlawfully attempt to ascertain the candidate or candidates for whom any elector shall vote or has voted, and will not in any way aid in the unlawful discovery of the same; and that I will keep secret all knowledge which may come to me of the person for whom any elector has voted.

Sworn before me this } *A. B.*,
day of 19 . } *C. D.*, .

J.P., *or as the case may be.*

3-4 Geo. V. c. 43, Form 14.

NOTE.—*When the voting is on a by-law or question the Form is to be adapted to that case.*

FORM 15.

CERTIFICATE OF CLERK AS TO ELECTION OF REEVES AND DEPUTY REEVES.

I, *A. B.*, of Clerk of the Corporation of the town (township *or* village, *as the case may be*) of in the County of do hereby, under my hand and the seal of the said Corporation, certify that C. D., of Esquire (*or as the case may be*), was duly elected reeve (*or* first deputy reeve, *or* second deputy reeve, *or* third deputy reeve, *as the case may be*) of the said town (township or village, *as the case may be*), and has made and subscribed the declaration of office and qualification as such reeve (*or* first deputy reeve, *or* second deputy reeve, *or* third deputy reeve, *as the case may be*). *A. B.*

3-4 Geo. V. c. 43, Form 15.

FORM 16.

Declaration of Office.

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (*insert name of office, or in the case of a person who has been appointed to two or more offices which he may lawfully hold at the same time*), that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the offices to which I have been elected (*or* appointed) in this municipality, and that I have not received, and I will not receive, any payment or reward, or promise thereof, for the exercise of any partiality or malversation or other undue execution of the said office (*or* offices), and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the said Corporation (*where declaration is made by the clerk, treasurer, collector, engineer, clerk of works or street overseer, add the words following*) save and except that arising out of my office as clerk (*or* my office as assessor or collector, *or as the case may be*).

3-4 Geo. V. c. 43, Form 16.

FORM 17.

Declaration of Election Officers.

I, *A. B.*, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (*inserting the name of the office*) in this municipality, and that I have not received, and will not receive, any payment or reward, or promise thereof, for the exercise of any partiality or malversation or other undue execution of the said office.

3-4 Geo. V. c. 43, Form 17.

FORM 18.

DECLARATION OF AUDITOR.

I *A. B.*, having been appointed auditor for the municipal corporation of , promise and declare that I will faithfully perform the duties of that office according to the best of my judgment and ability; and I do solemnly declare that I had not, directly or indirectly, any share or interest in any contract or employment (except that of auditor, *if reappointed*) with, by or on behalf of such municipal corporation during the year preceding my appointment, and that I have not any such contract or employment except that of auditor, for the present year.

A. B.

3-4 Geo. V. c. 43, Form 18.

FORM 19.

I, the undersigned, *A. B.*, declare that I am an elector in this municipality, and that I am desirous of promoting (*or* opposing, *as the case may be*) the passing of the by-law to (*here insert object of the by-law*), submitted by the Council of this municipality (*or* of voting in the affimative, *or* in the negative, *as the case may be*), on the question submitted.

Declared before me this
day of 19 . } *A. B.*

3-4 Geo. V. c. 43, Form 19.

FORM 20

BALLOT PAPER FOR VOTING ON A BY-LAW.

..........................19 . Voting on By-law to *(here insert object of the By-law)*, submitted by the Council of the of .	**FOR** The By-law.	**X**
	AGAINST The By-law.	

3-4 Geo. V. c. 43, Form 20. 7 Geo. V. c. 42, s. 25.

FORM 21.

BALLOT PAPER FOR VOTING ON QUESTION.

..........................19 . Voting on the following question *(here state question)*.	**YES**
	NO

3-4 Geo. V. c. 43, Form 21.

FORM 22.

DIRECTIONS FOR THE GUIDANCE OF VOTERS IN VOTING.

The voter will go into one of the compartments, and with the pencil provided in the compartment, place a cross (thus **X**) on the right hand side, in the upper space if he votes for the passing of the by-law, or in the affirmative, on the question, and in the lower space if he votes against the passing of the by-law, or in the negative on the question.

The voter will then fold up the ballot paper so as to shew the name or initials of the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) signed on the back, and leaving the compartment will, without showing the front of the paper to any person, deliver such ballot so folded to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*) and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the Deputy Returning Officer (*or* Returning Officer, *as the case may be*), who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter places on the paper more than one mark, or places any mark on his ballot paper by which he may be afterwards identified, or if the ballot paper has been torn, defaced or otherwise dealt with by the voter so that he can thereby be identified, it will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the Deputy Returning Officer (*or* Returning Officer, *as the case may be*), he will be subject to imprisonment for any term not exceeding six months, with or without hard labour.

In the following form of Ballot Paper, given for illustration, the Elector has marked his ballot paper in favour of the passing of the By-law:

<table>
<tr><td rowspan="2"></td><td rowspan="2">.......................19 .
Voting on By-law to (<i>here insert object of the by-law</i>) submitted by the Council of the of .</td><td>FOR
The By-law.</td></tr>
<tr><td>AGAINST
The By-law.</td></tr>
</table>

3-4 Geo. V. c. 43, Form 22. 7 Geo. V. c. 42, s. 25.

FORM 23.

Notice on Promulgation of By-law.

The above is a true copy of a by-law passed by the municipal council of the of
on the day of , 19 .
And all persons are hereby required to take notice that anyone desirous of applying to have such by-law, or any part thereof, quashed, must make his application for that purpose to the Supreme Court of Ontario, within three months after the first publication of this notice in the newspaper called the
, or he will be too late to be heard in that behalf.

3-4 Geo. V. c. 43, Form 23. 7 Geo. V. c. 42, s. 26.

FORM 24.

Notice of Registration of By-law.

Notice is hereby given that a by-law was passed by the
of on the day of
19 , providing for the issue of debentures to the amount of $, for the purpose of , and that such by-law was registered in the registry office of
the county of on the day of 19 .
Any motion to quash or set aside the same or any part thereof must be made within three months after the first publication of this notice, and cannot be made thereafter.

Dated the day of 19 .

Clerk.

3-4 Geo. V. c. 43, Form 24.

FORM 25.

CHIEF ENGINEER'S CERTIFICATE.

To the Trustees of the Railway Company Municipal Trust Account.

I, Chief Engineer of the Railway Company, do hereby certify that the company has fulfilled the terms and conditions necessary to be fulfilled under by-law number of the municipal council of the of , passed the day of , 19 , that is to say (*set out terms and conditions fulfilled*) to entitle the company to receive from the trustees the sum of

Dated the day of 19 .

Chief Engineer

3-4 Geo. V. c. 43, Form 25.

Forms 26 to 69 inclusive were on 4th April, 1917, approved by The Ontario Railway and Municipal Board under the authority of Section 536.

FORM 26.

PETITION FOR ERECTION OF VILLAGE.

(*Section 13* (*1*).)

TO THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY (*or* UNITED COUNTIES) OF..........................

THE PETITION OF THE UNDERSIGNED, freeholders and resident tenants of the district proposed to be incorporated, as hereinafter mentioned;

SHEWETH:—

That the names of your petitioners are entered on the last revised assessment roll of the municipality in which the district is situate.

That such of your petitioners as are tenants have been resident in the district for at least four months, that each of your petitioners is a British subject and of the age of 21 years.

That the district has a population exceeding 750.

That your petitioners are desirous that the district comprised within the following limits, that is to say (*describe district*),

. . . .

be erected into a village bearing the name of the Village of

. . . .

Wherefore your petitioners pray that a by-law may be passed erecting the said district into a village bearing the name above mentioned.

Name of Petitioner.	Whether Freeholder or Tenant.	Land owned or occupied by Petitioner.
		Insert No. of lot and where situate and if it forms part of a lot laid down upon a registered plan, the number of the lot according to the plan.

FORM 27.

BY-LAW ERECTING VILLAGE.

(*Section 13* (*1*).)

By-law No. . . . .

To provide for the erection of the Village of . . . .

Whereas a petition has been presented to this council praying for the erection into a village of the district comprised within the following limits:—

(*Describe district*) . . . .

And whereas the petition has been certified by the clerk of this council to be sufficiently signed as prescribed by section 13 of The Municipal Act.

And whereas it has been ascertained by a special census taken by direction of this council that the district has a population exceeding 750.

(*If the district comprises parts of more counties than one, add* And whereas the larger (*or* largest) part of the district is situate in the county of....................)

Be it therefore enacted by the Municipal Council of the Corporation of the County of.........................that:

1. The said district shall be and the same is hereby erected into a village.
2. That the village shall bear the name of the village of ....
3. That the boundaries of the said village shall be as follows: (*Describe boundaries*)..............................

Passed the day of..............19....

C. D., *A. B.*,

Clerk. Warden.

SEAL

FORM 28.

BY-LAW ASSENTING TO ANNEXATION (WITHOUT PETITION).

(*Section 23* (*1*).)

By-law No...........

To provide for the consent to the annexation of the.......... ....of..................to the............... of.............................

Be it enacted by the Municipal Council of the Corporation of the.......................of......................... that the consent of this council is hereby given to the annexation of the said........................of.................... to the.....................of..........................

unconditionally (*or, if upon terms,* "upon the terms following," *stating them*).

Passed this............day of............19....

C. D.,
Clerk.

SEAL

A. B.,
Mayor (*or* Reeve).

FORM 29.

PETITION FOR THE ANNEXATION OF A TOWN OR VILLAGE TO AN ADJACENT URBAN MUNICIPALITY.

(*Section 23* (5).)

TO THE MUNICIPAL COUNCIL OF THE CORPORATION AT THE TOWN (*or* VILLAGE) OF..................................

The petition of the undersigned electors of the town (*or* village) of..............................

SHEWETH:—

That your petitioners are desirous that the town (*or* village) of........................be annexed to the................ of....................unconditionally (*or, if upon terms,* on the following terms, *stating terms*).

....

Your petitioners therefore pray that a by-law for that purpose may be passed and submitted to the electors for their assent.

FORM 30.

BY-LAW FOR PROVIDING FOR THE ANNEXATION OF A TOWN OR VILLAGE TO AN ADJACENT URBAN MUNICIPALITY (*on Petition*).

(*Section 23* (*5*)).

By-law No...........

To provide for the annexation of the town (*or* village) of ....to the..................of...............

Whereas a petition signed by upwards of 150 electors of the said....................of....................has been presented to this council praying that the said town (*or* village) may be annexed to the.....................of................. unconditionally (*or if upon terms* on the following terms, *stating terms as in petition*).

Be it therefore enacted by the municipal council of the ....of.......................

That the assent of this council is hereby given to the annexation of the..........................of.................. to the.....................of....................in accordance with the prayer of the said petition.

Passed this.............day of.............19....

C. D., SEAL *A. B.*,

Clerk. Mayor.

FORM 31.

By-law for Taking Votes of Electors on Annexation.

(*Section 23* (*1*) *and* (*5*).)

By-Law No..........

For taking the votes of the electors of the............... of.......................upon by-law No..........

Whereas on the...............day of.............19.... a by-law was passed by this council assenting to the annexation of the...............of...............to the............. of.......................

Be it therefore enacted by the Municipal Council of the Corporation of the...................of......................

1. That a vote shall be taken for the purpose of ascertaining whether or not the said by-law is assented to by the

municipal electors of the said........................ ...
of........................

2. That the votes shall be taken on the...............day
of........................19......

3. That the places where the votes shall be taken and the deputy returning officers to take the same shall be as follows (*here state places and names of deputy returning officers*).

4. That the Clerk shall attend on the.................day
of........................19...........at the hour
of...........in the...........noon at...........
to sum up the number of votes for and against the by-law.

5. That the...........day of...........19.....at the hour
of...............o'clock in the........noon is hereby
appointed as the time and......................as the
place for the appointment of persons to attend at the polling places and at the final summing up of the votes by the clerk on behalf of the persons interested in and promoting or opposing the by-law.

Passed this.............day of.............19....

C. D.,
Clerk.

SEAL

Mayor.

FORM 32.

Petition for Incorporation of Township.

(*Section 24 (2).*)

To His Honour the Judge of the District Court of the District of..............................

The petition of the undersigned resident freeholders of the unorganized township of................................

(*or* of the locality not surveyed into townships hereinafter mentioned) sheweth as follows:—

1. That your petitioners are desirous that the inhabitants of the said township (*or* of the locality hereinafter mentioned, that is to say *describing locality*)................................ be incorporated as a township municipality.

2. That the said unorganized township has a population of not less than 100 (*or* the said locality has an area of not more than 20,000 acres and a population of not less than 100).

Your petitioners therefore pray that the inhabitants of the said unorganized township (*or* of the said locality) be incorporated as a township municipality.

FORM 33.

REPORT OF CHAIRMAN TO JUDGE.

(*Section 24 (4).*)

TO HIS HONOUR THE JUDGE OF THE DISTRICT COURT OF THE DISTRICT OF............................

The undersigned having been appointed by Your Honour, pursuant to section 24 of The Municipal Act, to act as chairman of the meeting of the inhabitants of the unorganized township of................................(*or* of the locality the inhabitants of which it is proposed to incorporate as a township municipality), has the honour to report as follows:—

1. That at the said meeting the number of votes given for and against the proposed incorporation were as follows:

   For Incorporation..............
   Against Incorporation..........

2. That the following persons were proposed for reeve and the number of votes given to each of them is set opposite his name:

   A. B. Number of votes for..........
   C. D. Number of votes for..........

   (*or* that A. B. only was proposed for reeve).

3. That the following persons were proposed for councillor and the number of votes given for each of them is set opposite his name:

A. B.	Number of votes for..........
C. D.	Number of votes for..........
E. F.	Number of votes for..........

(*or* that the following persons only were proposed for councillors.

A. B., etc.).

Dated this.............day of..............19....

X. Y.

NOTE.—*Where there is an equality of votes between two candidates and the chairman has given the casting vote, add before* "dated"*:* That there being an equality of votes between...............and...............for the office of................I gave the casting vote for...........

FORM 34.

OATH OF CHAIRMAN.

(*Section 24* (*5*).)

District of.....
....

I...............of the................of
in the District of........................
make oath and say:—

1. That I am the Chairman appointed by the Judge of the District Court of the District of......................to preside at the meeting of the inhabitants for the purposes mentioned in the annexed report.
2. That the statements contained in the said report are true.

Sworn before me at the..........of........
in the District of..........................
this............day of............19....

A. B.

A Commissioner, etc. (*or as the case may be*).

FORM 35.

OBJECTION TO REPORT.

(*Section 24 (6).*)

TO HIS HONOUR THE JUDGE OF THE DISTRICT COURT OF THE DISTRICT OF..................................

I object to the report of................................as to the result of (*or* to the proceedings at) the meeting held on the..............day of............19.....of the inhabitants for the purpose of becoming incorporated, called by Your Honour pursuant to section 24 of The Municipal Act.

The reasons for my objection are as follows:

(*State reasons*).

Dated this..............day of..............19.....

A. B.

FORM 36.

PETITION FOR SEPARATION OF A TOWNSHIP FROM A UNION OF TOWNSHIPS.

(*Section 28*).

TO THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF..................................

THE PETITION OF THE UNDERSIGNED, resident freeholders and tenants of the junior township of...................

SHEWETH:—

That your petitioners are desirous that the said junior township be separated from the union to which it belongs, viz., the united townships of..................................and attached to the adjoining township of...............

YOUR PETITIONERS THEREFORE PRAY:—

That a by-law may be passed for that purpose.

FORM 37.

BY-LAW SEPARATING A JUNIOR TOWNSHIP FROM A UNION OF TOWNSHIPS ON PETITION.

(*Section 28.*)

By-law No. . . . .

To separate the junior township of . . . . from the union to which it belongs and to annex it to the township of . . . .

Whereas a petition has been presented to this council by two-thirds of the resident freeholders and tenants of the junior township of . . . . praying that it be separated from the union to which it belongs.

And whereas this council considers that the interest and convenience of the inhabitants of the said junior township would be promoted thereby.

Be it therefore enacted by the Municipal Council of the Corporation of the County of . . . .

1. That the said junior township be and the same is hereby separated from the united townships of . . . . to which union it belongs.
2. That the said junior township and the adjoining township of . . . . be and they are hereby erected into a union of townships.

Passed this . . . . day of . . . . 19. . . .

C. D., SEAL *A. B.*,

Clerk. Warden.

FORM 38.

BY-LAW FOR SEPARATING A JUNIOR TOWNSHIP FROM A UNION OF TOWNSHIPS.

(*Section 30 (1).*)

By-law No. . . . .

To separate the junior township of. .from the union to which it belongs.

Whereas the township of. . . . . , a junior township of the union of townships bearing the name of the united townships of. . . . . , has 100 resident freeholders and tenants whose names are entered on the last revised assessment roll, and it is expedient to separate it from the union.

Be it therefore enacted by the Municipal Council of the Corporation of the County of. . . . .

That the junior township of. . . . . .be and the same is hereby separated from the united townships of. . . . .

Passed this. . . . . .day of. . . . . .19. . . .

C. D., Clerk.	SEAL	*A. B.*, Warden.

FORM 39.

PETITION FOR SEPARATING A JUNIOR TOWNSHIP FROM A UNION OF TOWNSHIPS.

(*Section 30 (3).*)

TO THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF. . . . .

THE PETITION OF THE UNDERSIGNED, resident freeholders and tenants of the junior township of......................., whose names are entered on the last revised assessment roll.

SHEWETH:—

That the said junior township has 50, but less than 100, resident freeholders and tenants whose names are entered on the last revised assessment roll.

That the said junior township is so situated with reference to natural obstructions that its inhabitants cannot conveniently remain united with the inhabitants of the other township (*or* townships).

YOUR PETITIONERS THEREFORE PRAY:—

That the said junior township be separated from the township (*or* townships) with which it is now united.

FORM 40.

BY-LAW FOR SEPARATING A JUNIOR TOWNSHIP FROM A UNION OF TOWNSHIPS.

(*Section 30 (3)*.)

By-law No...........

To separate the junior township of....................from the union to which it belongs.

Whereas the junior township of........................has 50, but less than 100, resident freeholders and tenants whose names are entered on the last revised assessment roll, and two-thirds of such resident freeholders and tenants have presented a petition to this council praying that, for the reasons hereinafter mentioned, the said junior township be separated from its union with the township (*or* townships) of.........................

And whereas this council considers the said junior township to be so situated with reference to natural obstructions that its inhabitants cannot conveniently remain united with the inhabitants of the said township (*or* townships) of..................

Be it therefore enacted by the Municipal Council of the Corporation of the County of..........................

That the said junior township be and the same is hereby separated from the said township (*or* townships) of..............

Passed this..............day of..............19....

C. D.,
Clerk.

SEAL

A. B.,
Warden.

FORM 41.

Affidavit in Support of Application for a Recount.

(*Section 129.*)

In the matter of the municipal
election for.....................
the...........of...............
held on the..................day
of.....................19.....

I..................of the.............of.............
in the............of..................,..........,
make oath and say:

1. That I have reason to believe and do believe that at the municipal election held on the................day of.....................19......for the.............of.......................................(*or* the.................ward of the..................of.....................) a deputy returning officer at (*state polling place*) improperly counted or rejected ballot papers (*or* made an incorrect statement of the number of ballots cast for......................, a candidate at the said election, *as the case may be*).

2. My reasons for so believing are (*state reasons*):

Sworn before me at the................ }
of..........in the....................of } *A. B.*
........this...........day of.......... }

A Commissioner, etc. (*or as the case may be.*)

FORM 42.

JUDGE'S APPOINTMENT FOR HOLDING RECOUNT.

(*Section 129.*)

Whereas application has been made to me to recount the votes cast at the municipal election for the........................ of..........................held on the...............day of...................19........ (*or as the case may be*), and it has been made to appear to me by the affidavit of........................... that (*state the ground alleged for the recount*), I do hereby appoint the..............day of.................... 19......at the hour of................o'clock in the.......... noon at............for recounting the votes at the said election.

Dated the..............day of..............19....

Judge of the County (*or* District) Court
of the County (*or* District) of......

NOTE.—*Where the recount has been declared by resolution of the council to be desirable, the form may be altered accordingly.*

FORM 43.

BY-LAW TO DECLARE SEAT OF A MEMBER OF THE COUNCIL VACANT.

(*Section 152.*)

By-law No...........

For declaring the seat of a member
of the council to be vacant.

Whereas............................, a member of this council, is undergoing imprisonment under sentence for a criminal offence.

Be it therefore enacted by the Municipal Council of the Corporation of the....................of........................

That the seat of the said..................................... as (*state office held by him*) and a member of this council be and the same is hereby declared to be vacant.

Passed this..............day of..............19....

C. D.,
Clerk.

SEAL

A. B.,
(Mayor *or* Warden
or Reeve).

NOTE.—*This form may be used in any other of the cases mentioned in section 152, substituting for the cause mentioned in the preamble, the cause in respect of which the by-law is passed.*

FORM 44.

WARRANT FOR HOLDING NEW ELECTION.

(*Section 156.*)

Whereas a vacancy has occurred in the office of member of the council of the corporation of the...................... of.................................owing to (*state cause of the vacancy*), I..................................the head of the council (*or state office held by the person issuing the warrant and the reason for the warrant not being issued by the head of the council*), do hereby require you to hold a new election to fill the vacancy.

And I appoint the...........day of..............19..... for the nomination of candidates and the..................day of.......................19......for the polling, if a poll is required.

In witness whereof I have hereunto set my hand this........ ....day of..................19......

To the returning officer and the deputy returning officers appointed to hold the next preceding election. } *A. B.*

NOTE.—*Where, pursuant to section 156 (4), the warrant is issued by the head clerk, or a member of the council of the next preceding year, the form will be altered accordingly.*

FORM 45.

RECOGNIZANCE.

(*Section 162.*)

Be it remembered that on the........................day of..............................one thousand nine hundred and............, before me...........................Chief Justice of..............(*or* a Judge of, *or* a commissioner for taking affidavits in) the Supreme Court of Ontario, come (*relator's name*) and........of..............and............, of..........................(*names and occupations of sureties*), and acknowledge themselves severally and respectively to owe to our Sovereign Lord the King as follows, that is to say, the said (*relator's name*) the sum of two hundred dollars, and the said....................and..................(*names of sureties*) the sum of one hundred dollars each, upon condition that if the said (*relator's name*) do prosecute with effect the notice of motion in the nature of a *quo warranto*, to be served pursuant to a fiat to be made at the instance and upon the relation of the said (*relator's name*) against the said (*defendant's or defendants' names*) to show by what authority he (*or* they) claims (*or* claim) to be (*here state the office so claimed*), and why he (*or* they) should not be removed therefrom (*and where so claimed by the relator* why he *or* the person *or* persons entitled should not be declared duly elected, and be admitted to the said office); and if the said (*relator's name*) do pay to the said (*defendant or defendants*) against the said (*relator*) then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year first above mentioned before me.

A. B.

FORM 46.

Affidavit of Justification.

(*Section 162.*)

I (*name, residence and occupation*), one of the sureties in the recognizance hereto annexed, make oath and say:—

1. That I am a freeholder (*or as the case may be*), residing at the....................of....................

2. That I am worth property to the amount of one hundred dollars over and above what will pay all my just debts (*add if bail in any other action or proceeding*) and for every other sum for which I am now bail or surety in any action or proceeding, and that I am not bail or surety in any other action or proceeding except for............:......................at the suit of ....in (*name of court*) in the sum of...........

(*or if not bail in any action or proceeding*
that I am not bail or surety in any other action or proceeding).

And I..........................(*name, residence and occupation*), one of the sureties in the recognizance hereto annexed, make oath and say:

1. That I am a freeholder (*as before*).

The above named deponents were sworn before me, at the.................
of..................in the county
of.............this...........day
of................19......

A. B.
C. D.

A Commissioner, etc.

FORM 47.

Notice of Motion to Set Aside Election, Etc.

(*Section 163*).

In the Supreme Court of Ontario.

The King on the relation
of *A. B.*
vs.
C. D.

Take notice that by leave of................a motion will be made on behalf of ....(*name in full*) of the..........of......... in the county of................, ...(*occupation*) the above named relator, who has an interest in the election as candidate (*or* as an elector) to the presiding Judge in Chambers (*or* the Master in Chambers), at Osgoode Hall, in the City of Toronto on................the........day of............... 19......at................o'clock in the............noon or as soon thereafter as counsel can be heard to set aside the election held at the..........................of................... in the county (*or* district) of............on the.............day of........................19......at which the above named defendant was declared to be elected as...................... (*and if the seat is claimed add* and declaring that the relator *or*......................was duly elected to the said office and should have been returned and that he be now admitted thereto).

And take notice that the grounds of objection to the validity of the election of which the relator complains are as follows (*state specifically under distinct heads all the grounds of objection*). (*Where the seat is claimed add*, further take notice that the grounds in favour of the election of the relator *or* of the said.............. are as follows—*state specifically under distinct heads all the grounds in favour of such election*).

And also take notice that in support of such motion will be read the affidavits of...........................(*if viva voce* *evidence is to be used add*, and the evidence of.................. whom I propose to examine for the purposes of this motion).

Dated the..............day of..............19....

To the above named defendant. A. B.,
Relator (*or*,
C. D., solicitor for the relator).

NOTE.—*Where the right of a member of a council to sit is contested, this form may be used, substituting for the words between "can be heard" and the words "and also take notice that in support" the following:*—

for a delaration that the above named defendant, a member of the municipal council of the corporation of the................ of.......................holding the office of............. has no right to sit as such member because he has become disqualified (*or* has forfeited his seat) since his election.

Also take notice that the grounds upon which the relator will rely are (*state specifically under distinct heads all the grounds*).

Where the right of a municipality to a deputy reeve is contested, the form may be used substituting for what is eliminated in the case last provided for the following:—

to declare that the......................of.................. is not entitled to a deputy reeve (*or* first deputy reeve *or* second deputy reeve *or* third deputy reeve, *as the case may be*), and that the above named defendant is not entitled to sit in the county council as such (*stating whether as deputy reeve or, etc.*).

Also take notice that the grounds upon which the relator will rely are (*stating specifically under distinct heads all the grounds*).

NOTE.—*Where the proceedings are taken before a Judge of a County or District Court, this form may be used, but the notice of motion must be entitled in that Court, and the notice must state that the application will be made to a Judge of that Court.*

FORM 48.

SYNOPSIS OF BY-LAW TO BE PUBLISHED IN LIEU OF A COPY OF THE BY-LAW.

Section 263 (7).

1. On the . . . . day of . . . . 19 . . . . a by-law was passed by the municipal council of the corporation of the . . . . of . . . . for (*here state object of the by-law, e.g.*, borrowing on the sinking fund plan *or* on the instalment plan) the sum of . . . . for the following purpose (*state concisely the purpose*) . . . . *or*, entering into a contract with . . . . for (*state concisely the purpose*), a draft of which contract may be seen at the office of the clerk.

2. (*Where the by-law is not for borrowing money*). The amount of the debt or liability to be created is . . . .

3. The debt or liability is to be payable according to the terms of the draft contract, (*or in the case of borrowing money*) the amount to be borrowed is to be payable in . . . . years from the date of the issue of the debentures.

4. *If the debentures are issued on the sinking fund plan.* The amount required to be raised annually for the payment of the debt will be . . . . dollars, and for the payment of the interest will be . . . . dollars. *or if the debentures are issued on the instalment plan.* The amount to be raised to pay the debt and interest will be as follows.

For the 1st year . . . . dollars.
" " 2nd " . . . . "

Dated the . . . . day of . . . . 19 . . . .

Clerk.

FORM 49.

AFFIDAVIT TO OBTAIN ORDER FOR A SCRUTINY OF VOTES.

(Section 279 (1)).

I....................of the.............of............, make oath and say:

1. That I desire that a scrutiny be had of the votes polled at the municipal election held at..........................on the.................day of....................19.......of alderman (*or* councillor *or as the case may be*).

2. That the grounds of my application are the following (*state fully the grounds of the application*).

Sworn before me at the..........
of................in the county
(*or* district) of................
This........day of......19....

A Commissioner, etc. (*or as the case may be.*)

NOTE.—*Where a scrutiny of the votes upon a by-law or question submitted to the electors is desired, this form may be adapted to meet the case.*

FORM 50.

RECOGNIZANCE.

(Section 279).

Be it remembered that on the.............day of.......... 19........(*applicant*) and.................and.............. (*the sureties*) come before me and acknowledge themselves to owe to His Majesty the King the said (*applicant*) the sum of one hundred dollars and the said..........................and ....(*sureties*) each the sum of fifty dollars upon condition that if the said (*applicant*) do prosecute with effect his application for a scrutiny of the votes polled at the municipal election held at.........................on the

. . . . day of. . . . . .19. . . . . . . of alderman (*or* councillor *or as the case may be*), and if the said (*applicant*) do pay to. . . . . all such costs as may be awarded to. . . . . .upon the said application then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the
day and year first above
mentioned before me.

A. B.,

Judge of the County (*or* District Court
of the County *or* District of. . . . .)

NOTE.—*Where a scrutiny of the votes upon a by-law or question submitted to the electors is desired, this form may be adapted to meet the case.*

The affidavit of justification may be according to Form 46.

FORM 51.

JUDGE'S ORDER FOR A SCRUTINY OF VOTES.

(*Section 279.*)

Upon reading the affidavit of. . . . . I,. . . . . Judge of the County (*or* District) Court of the county (*or* district) of. . . . . do order that a scrutiny be had of the votes polled at the municipal election held at. . . . . on the. . . . . day of. . . . . .19. . . . . . of alderman (*or* councillor *or as the case may be*), and I appoint . . . . as the place and the. . . . . .day of. . . . . .19. . . . . . at the hour of. . . . . o'clock in the. . . . . .noon as the time when I will proceed with the recount.

A. B.

NOTE.—*Where a scrutiny of the votes upon a by-law or question submitted to the electors is desired, this form may be adapted to meet the case.*

FORM 52.

NOTICE OF SCRUTINY.

(Section 279.)

Take notice that the Judge of the County (*or* District) Court of the county (*or* district) of..................has appointed the.............day of.................19..........at the hour of.........................o'clock in the.........noon at..................................to proceed with a scrutiny of the votes polled at the Municipal Election held at...........................on the................... day of..........................19..........of alderman (*or* councillor *or as the case may be.*)

A. B.

NOTE.—*Where a scrutiny of the votes upon a by-law or question submitted to the electors is desired, this form may be adapted to meet the case.*

FORM 53.

NOTICE OF MOTION TO QUASH BY-LAW.

(Section 283.)

IN THE SUPREME COURT OF ONTARIO.

In the matter of........... and the Corporation of the ....of.........	Take notice that the Court will be moved on behalf of the above named.............

on the...................day of.................19..... at..................o'clock in the.........noon or so soon thereafter as counsel can be heard for an order quashing by-law No................passed by the municipal council of the corporation of the.......................of.................. on the.................day of.....................entitled ....(*or* so much of by-law No..............passed by the municipal council of the cor-

poration of the.....................of.....................
on the.......................day of...............entitled
.......................*or* sections..................of by-law No..............passed by the municipal council of the corporation of the.....................of.....................
on the..................day of...........entitled..........)
on the following grounds (*state grounds of application*).

And take notice that in support of the motion will be read a duly certified copy of the said by-law and the affidavits of ....and..................this day filed.

Dated the.............day of.............19....

A. B.,
Solicitor for the Applicant.

To the Corporation of the...........of...........

FORM 54.

Money By-law.

(*Section 288.*)

By-law No..........

For borrowing the sum of...................dollars.

Whereas it is expedient to borrow for (*here state in brief and general terms the object for which the debt is to be created*) the sum of...................................and that is the amount of the debt intended to be created.

And whereas the amount of the whole rateable property of the municipality according to the last revised assessment roll (*or in the case of a county* the last revised and equalized assessment rolls of the local municipalities of which the county is composed) is.......................dollars.

And whereas the amount of the debenture debt of the corporation is........................dollars, no part of the principal or interest of which is in arrear (*or as the case may be*).

Be it therefore enacted by the municipal council of the corporation of the...................of......................

1. For the purpose mentioned in the preamble there shall be borrowed on the credit of the corporation the sum of ....dollars, and debentures shall be issued therefor on the sinking fund plan (*or* on the instalment plan) in sums of not less than $100 each (*if coupons are to be attached add* which shall have coupons attached thereto for the payment of the interest).

2. The debentures shall all bear the same date and shall be issued within two years after the date on which this by-law is passed and may bear any date within such two years and shall be payable (*if on the sinking fund plan*) within............... years from the date when they shall be issued, and shall bear interest at the rate of..........................per cent. per annum, payable.............yearly (*or if on the instalment plan* in................annual instalments during the............. years next after the date when they shall be issued, and the respective amounts payable in each of such years shall be as follows:—

Years.	Principal.	Interest.	Total.
1			
2			
3			

3. The debentures as to both principal and interest may be expressed in Canadian currency or in sterling money of Great Britain at the rate of one pound sterling for each four dollars and eighty-six and two-thirds cents and may be payable at any place or places in Canada or Great Britain.

4. The debentures (and the interest coupons) shall be signed and issued by the mayor (*or* warden *or* reeve), *if any*, and shall be signed also by the treasurer, and the debentures shall be sealed with the seal of the corporation.

☞ *In the case of a city it is not necessary that the coupons should be signed by the mayor.*

5. (*If on the sinking fund plan.*) During the currency of the debentures there shall be raised annually...............dollars to form a sinking fund for the payment of the debt and ....dollars for the payment of the interest thereon, making in all...................dollars to be raised annually for the payment of the debt and interest.

Or

(*If on the instalment plan*).

5. During the currency of the debentures there shall be raised in each year the amount of the instalment of principal and interest payable in that year as set forth in section 2.

6. The debentures may contain any provision for the registration of them authorized by law.

7. This by-law shall take effect on the day of the passing thereof, subject to its being assented to by the electors.

Passed this..............day of................19....

SEAL

C. D.,
Clerk.

A. B.,
Mayor (*or* Warden *or* Reeve).

FORM 55.

Bonus By-law.

(*Section 396.*)

By-law No...........

For granting a bonus to............................

Whereas it is expedient in the interest of the municipality to grant the bonus hereinafter mentioned for (*set out the object as it is described in section 396, e.g.*, for the promotion of manufactures in the municipality *or* for the establishment of a grain elevator in the municipality, *or as the case may be*).

Be it therefore enacted by the municipal council of the corporation of the...................of........................

1. For the purpose mentioned in the preamble the sum of ....shall be given (*or* loaned) to.......................................by way of bonus *or* water shall be supplied to........................ from the corporation's waterworks system, free of charge (*or* at the following rates, *stating them*), during the period of.......... years from the...............day of...............19..... *or* the following property, that is to say (*describe property*) shall be exempt from municipal taxation (not including school rates or taxes) *or* shall be assessed at not more than the sum of . ...during the period of.......... years from the.....................................day of......................19........(*or as the case may be*).

2. That such bonus shall be given upon and subject to the terms and conditions of the draft agreement hereunto annexed.

☞ *Where the bonus is a gift or loan, the by-law must contain the provisions requisite for a money by-law form 54 and if it is a loan the by-law may provide that all money received on account of the loan shall be deposited to a special account in a chartered bank and that such money or a sufficient part of it shall be applied in payment of the amount falling due in such year for principal and interest on account of debentures issued to pay the bonus: s. 396 (f).*

Passed the.............day of.............19....

A. B.,
C. D., SEAL Mayor (*or* Warden *or*
Clerk. Reeve).

FORM 56.

HAWKERS AND PEDLARS BY-LAW.

(*Section 416, par. 1.*)

By-law No..........respecting hawkers and pedlars.

Be it enacted by the municipal council of the corporation of the........................of....................

1. "Hawker" shall include the persons mentioned in clause (*e*) of paragraph 1 of section 416 of The Municipal Act.

2. No hawker, pedlar or petty chapman or other person carrying on a petty trade or who goes from place to place or to other men's houses, on foot or with any animal, vehicle, boat, vessel or other craft bearing or drawing goods, wares or merchandize for sale or otherwise carrying goods, wares or merchandize for sale, or goes from place to place or to other men's houses to take orders for coal oil or other oil, which is to be delivered afterwards from a tank car moved on a railway line, or goes from place to place or to a particular place to make sales or deliveries of coal oil or other oil from such tank car, shall do so or carry on his trade or business within the municipality unless he shall have obtained a license so to do.

3. That the fee to be paid for the license shall be ....dollars (*or where a lower license fee is to be payable as authorized by clause g of paragraph 1.* In the case of a person who has resided continuously within this municipality for at least one year prior to the application for the license ....dollars.
In the case of other persons....................dollars).

4. That the Treasurer (*or* Clerk of the County *or* the clerks of the municipalities within the county) shall be provided with licenses to be issued to persons applying for them (*if regulations for the issue of the licenses are to be prescribed add* under and subject to the following regulations *and set them out*).

5. This by-law shall not extend or apply to the cases in which by clause *a* of paragraph 1 a license shall not be required.

6. Every person who is guilty of a contravention of this bylaw shall incur a penalty not exceeding....................dollars exclusive of costs, and in case of non-payment of the fine and costs the same may be levied by distress and sale of the goods and chattels of the offender and in case of non-payment of the fine and costs, and there being no distress found out of which the same can be levied such offender shall be liable to be imprisoned

in the common gaol of the county of..................with or without hard labour for any period not exceeding 21 days.

Passed this..............day of..............19....

C. D., Clerk.	SEAL	A. B., Mayor (*or* Warden *or* Reeve).

FORM 57.

TRANSIENT TRADERS BY-LAW.

(*Section 420, pars. 6 and 7.*)

By-law No...........respecting transient traders.

Be it enacted by the municipal council of the corporation of the............................of....................

1. No transient trader as defined by clause *b* of paragraph 7 of section 420 of The Municipal Act or other person whose name has not been entered on the last revised assessment roll of this municipality in respect of income or business assessment for the then current year shall unless he shall have obtained a license so to do offer goods, wares or merchandise for sale by auction conducted by himself or by a licensed auctioneer or otherwise or offer them for sale in any other manner.

2. Every such transient trader or other person whose name is not entered on the assessment roll or is entered on it for the first time in respect of income or business assessment who so offers goods, wares or merchandise shall pay the license fee hereinafter mentioned before commencing to trade.

3. The fee to be paid for a license shall be............dollars.

4. This by-law shall not apply to the sale of the stock of an insolvent which is being sold or disposed of within the county or district in which he carried on business therewith at the time of the issue of an attachment or the execution of an assignment.

5. Every person who is guilty of a contravention of this

by-law shall incur a penalty not exceeding.............dollars exclusive of costs, and in case of non-payment of the fine and costs the same may be levied by distress and sale of the goods and chattels of the offender and in case of non-payment of the fine and costs and there being no distress found out of which the same can be levied such offender shall be liable to be imprisoned in the common gaol of the county of..................with or without hard labour for any period not exceeding 21 days.

Passed this.............day of.............19....

C. D., Clerk.	SEAL	A. B., Mayor (*or* Warden *or* Reeve).

FORM 58.

Notice of Application to Judge.

(*Section 449.*)

Take notice that the corporation of the township (*or* town) of..........................will apply to the Judge (*or* the junior Judge) of the County Court of the County of............ at............................on the................day of....................19......at the hour of............. o'clock in the..........noon for an order declaring the bridge (*describing it*) to be a county bridge for the reasons mentioned in section 449 of The Municipal Act.

And take notice that in support of such motion will be read the affidavits of.......................and such oral evidence as shall be taken before the said Judge.

Dated this.............day of.............19....

A. B.,
Clerk of the said township (or town).

(*or* C. D.,
Solicitor for the Applicant).

To the Corporation of
the County of......

FORM 59.

Order of Judge.

(*Section 449.*)

In the matter of the bridge (*describing it*).........	Upon the application of the Corporation of the...............of ....upon hearing read the affidavits of............and upon

hearing the evidence taken before me and what was said by counsel for the said corporation and for the corporation of the county of..........................I am of opinion that, for the reasons mentioned in subsection 1 of section 449 of The Municipal Act, the bridge (*describing it*) should be declared to be a county bridge, and I determine that the expense of maintaining and repairing it shall be borne as follows (*state whether by the county corporation alone or partly by it and partly by the applicant corporation, and in the latter case in what proportions by each of them*), and I so order.

(*If costs are awarded add* and I direct that the costs of and incidental to the application be paid (*state how and by whom*)).

Dated this.............day of.............19....

Judge of the County Court of the
County of..............

FORM 60.

Resolution of County Council.

(*Section 468.*)

Whereas application has been made by petition to this council by the council of the corporation of the township of ....to determine, pursuant to section 468 of The Municipal Act, the character of the work to be done in open-

ing, maintaining or repairing the boundary line between that township and the......................of...................
(*or* as to the proportions in which the cost of the work to be done in opening, maintaining or repairing the boundary line between that township and the..................of..................)

And whereas, notice has been given to all the corporations interested and they or such of them as desired to be heard, have been heard.

Be it resolved by the municipal council of the corporation of the county of..................and it is hereby directed:

1. That the following work shall be done (*describe work to be done*).

Where the dispute is only as to the proportions in which the cost of the work is to be borne, omit section 1.

2. That the proportions in which the cost of the work shall be borne shall be as follows:

By the township of......................
By the township of......................

3. That...
shall be commissioners (*or* a commissioner) to execute and enforce the direction made by this resolution.

Adopted this..............day of..............19....

C. D., Clerk. SEAL *A. B.*, Warden.

FORM 61.

NOTICE OF INTENTION TO PASS A BY-LAW UNDER SECTION 472 (1), CLAUSES *a*, *b*, AND *c*.

(*Section 475.*)

Take notice that the municipal council of the corporation of the......................of.......................will take into consideration the passing and if approved will pass at its meeting to be held on the............day of............19.... at the hour of..............o'clock in the..........noon at (*place of meeting*) a by-law for stopping up (*if it is intended also to sell add* and selling) that part of the allowance for road between the........................and................concession of the township which lies between (*insert here description of the part to be stopped up*), and the council will at that time and place hear in person or by his counsel, solicitor or agent any person who claims that his land will be prejudicially affected by the by-law and who applies to be heard.

Dated the..............day of..............19....

A. B.,
Clerk.

NOTE.—*This form may be adapted in the framing of a by-law for any of the purposes mentioned in clauses a, b, or c.*

FORM 62.

BY-LAW RESPECTING HIGHWAYS.

(*Section 472 (1)*).

By-law No...........For establishing and laying out a highway in the.............concession of the............... of......................

Whereas it is expedient to lay out and establish a highway as hereinafter mentioned.

Be it therefore enacted by the municipal council of the corporation of the......................of....................

1. That a public highway shall be and is hereby established commencing (*give description of the land which is to constitute the highway*).

2. That (*insert name of officer or person*) be and he is hereby authorized to take such steps as may be necessary to acquire the

said land by agreement with the owner or by expropriation proceedings under The Municipal Act.

3. That (*insert name of officer or person*) be and he is hereby authorized to cause the said highway to be made fit for travel and in so doing to expend so much money as may be necessary and shall have been appropriated for that purpose.

4. That when the said highway shall have been made fit for travel and a resolution of this council shall have been passed so declaring, it shall be open for public use.

Passed the..............day of..............19....

C. D.,
Clerk.

SEAL

A. B.,
Reeve (*or* Mayor).

NOTE.—*This form may be adapted in the framing of any by-law for the passing of which section 472 provides.*

FORM 63.

BY-LAW FOR SEARCHING FOR AND TAKING TIMBER, GRAVEL, ETC.

(*Section 483, par. 10*).

By-law No...........For entering upon and searching for and taking timber (*or* gravel, *or* stone, *or other material, describing it*) required for constructing, maintaining and keeping in repair the highways and bridges (*or* highways *or* bridges).

Whereas timber (*or* gravel, *or* stone *or other material, describing it*) is required for constructing, maintaining and repairing the highways and bridges of this municipality (*or* the highways *or* the bridges of this municipality).

Be it therefore enacted by the municipal council of the corporation of the......................of.....................

1. That it shall be lawful for the engineer of the corporation

(*or* for *naming the officer or person to be authorized*) to enter upon any land in this municipality or in any adjacent municipality whose council shall by by-law or resolution assent thereto, and to search for such timber (*or* gravel *or* stone *or other material, describing it*).

2. That if the same shall be found in such land, it shall be lawful for the said.................................to take from such land so much of it as shall be required for the purposes mentioned in the preamble, after the compensation to be paid therefor shall have been agreed upon or determined by arbitration.

Passed this..............day of..............19....

C. D., Clerk.	SEAL	A. B., Mayor (*or* Warden *or* Reeve).

FORM 64.

PETITION FOR FORMATION OF A POLICE VILLAGE.

(*Section 502*).

TO THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF...................................

THE PETITION OF THE UNDERSIGNED, freeholders and resident tenants of the locality proposed to be formed into a police village as hereinafter mentioned, whose names are entered on the last revised assessment roll.

SHEWETH:

1. That your petitioners are desirous that the locality, the boundaries of which are as follows (*describe locality*), be formed into a police village.

2. That the locality has a population of not less than 150 and an area of not more than 500 acres.

Your petitioners therefore pray that a by-law may be passed forming the said locality into a police village.

Name of Petitioner.	Freeholder or Resident Tenant.	Land owned or occupied by Petitioner.

FORM 65.

BY-LAW FOR THE FORMATION OF A POLICE VILLAGE.

(*Section 502.*)

By-law No. . . . . For the formation of the police village of. . . . .

Whereas a petition has been presented to this council praying that the locality hereinafter described be erected into a police village.

And whereas the petition is signed by a majority of the freeholders of the locality whose names are entered on the last revised assessment roll and by a sufficient number of the resident tenants of the locality whose names are entered on such roll to make up with such freeholders a majority of the whole number of freeholders and tenants whose names are so entered.

And whereas the locality has a population of not less than 150 and an area of not more than 500 acres. (*Where the locality comprises parts of more counties than one add* and whereas the larger *or* largest part of the locality is situate in the county of. . . . .)

Be it therefore enacted by the municipal council of the corporation of the county of. . . . .

1. That the said locality, the boundaries of which are as follows (*describe locality*), be and the same is hereby formed into a police village, which shall bear the name of..................

2. That the first election of trustees of the said police village shall take place at....................on the.............day of....................19......and.........................

shall be the returning officer to hold the election.

3. That the first meeting of trustees shall take place at..............................on the..............day of..............................19..........at the hour of...............o'clock in the..........noon.

4. That this by-law shall take effect on the..............day of..........................19......(*or* from the time of the passing thereof).

Passed this..............day of..............19........

C. D.,
Clerk.

SEAL

A. B.,
Warden.

FORM 66.

PETITION FOR ANNEXATION OF TERRITORY TO POLICE VILLAGE.

(*Section 503.*)

TO THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF....................................

THE PETITION OF THE UNDERSIGNED, freeholders and tenants of the police village of..........................whose names are entered on the last revised assessment roll and resident freeholders and tenants of the territory proposed to be added to the police village whose names are entered on the last revised assessment roll of the municipality.

SHEWETH:

That your petitioners are desirous that the area of the said police village be increased by adding to it the following adjoining land, that is to say (*describe land to be added*).

Your petitioners therefore pray that a by-law may be passed increasing the area of the said police village by adding to it the territory hereinbefore mentioned.

FREEHOLDERS OR TENANTS OF POLICE VILLAGE.

Name of Petitioner.	Freeholder or Tenant.	Land owned or occupied by Petitioner.

RESIDENT FREEHOLDERS AND TENANTS OF TERRITORY PROPOSED TO BE ADDED.

Name of Petitioner.	Freeholder or Tenant.	Land owned or occupied by Petitioner.

FORM 67.

BY-LAW FOR INCREASING AREA OF POLICE VILLAGE.

(*Section 503.*)

By-law No.......... For increasing the area of the police village of....................................

Whereas the police village of.................was established by by-law of this council passed on the..............day of......................19....

And whereas a petition has been presented to this council praying for the passing of a by-law to increase the area of the said police village by adding to it the land hereinafter described which adjoins it.

And whereas the petition is signed by two-thirds of the freeholders and tenants of the village whose names are entered upon the last revised assessment roll and by a majority of the resident freeholders and tenants of the territory proposed to be added.

Be it therefore enacted by the municipal council of the corporation of the county of..............................

That the territory described as follows: (*describe by metes and bounds or otherwise sufficient to identify*) shall be and the same is hereby added to and shall hereafter form part of the said police village.

Passed this..............day of..............19....

C. D.,
Clerk.

SEAL

A. B.,
Warden.

NOTE.—*If any part of the land added is situate in another county, the by-law should recite the fact that the council of that county has consented to its being added to the police village.*

FORM 68.

GENERAL FORM OF BY-LAW.

By-law No...........To provide for (*state object of the by-law*).

Whereas (*insert here any recitals*).........................

Be it (*where there are recitals add* therefore) enacted by the municipal council of the corporation of the...................of......................................

1. (*Here follow the enacting clauses, e.g.,* that after this by-law takes effect the aldermen shall be elected by general vote).

Passed this..............day of..............19....

SEAL

A. B.,
Mayor (*or* Warden *or* Reeve).

C. D.,
Clerk.

FORM 69.

BY-LAW FOR ENTERING INTO CONTRACT.

By-law No...............For entering into a contract with ....for (*state the purpose, e.g., for the purchase of a fire engine*).

Whereas it is expedient to enter into a contract with ....for the purchase from..........................of.......................... (*or as the case may be*).

And whereas the terms of the proposed contract have been settled and are contained in the draft contract hereunto annexed.

Be it therefore enacted by the municipal council of the corporation of the....................................

1. That the entering into of the proposed contract is hereby approved and authorized.

2. That the Mayor (*or* Warden *or* Reeve) and Clerk be and they are hereby authorized and directed to sign the engrossment of the said proposed contract and to affix to it the corporate seal of the municipality.

Passed this.............day of..............19....

C. D.,
Clerk.

SEAL

A. B.,
Mayor (*or* Warden *or* Reeve).

FORM 70.

BY-LAW FOR TAKING THE VOTES OF THE ELECTORS ON A PROPOSED BY-LAW.

BY-LAW NO.......

A By-law to provide for taking the votes of the electors on a proposed By-law entitled (*here set out the short title of the proposed By-law*).

Passed the...........day of...........A.D. 19....

Whereas a proposed By-law of the Corporation of the........ ....of..................entitled (*here set out the short title of the proposed By-law*) requires for its validity the assent of the electors, and it is expedient and necessary to pass this By-law for the purpose of enabling the electors to vote on the proposed By-law;

Be it therefore enacted by the Municipal Council of the Corporation of the....................of...................... as follows:—

1. The votes of the electors of the Corporation of the........ ....of.......................shall be taken on the said proposed By-law on the.........................day of...........................A.D. 19......, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon at the following places, and by the following Deputy Returning Officers, namely: (*here set out the polling places and the names of the Deputy Returning Officers*).

2. On the.............day of...............A.D. 19...., at the hour of...............o'clock in the...........noon, the head of the Council of the said Corporation or some member of said Council appointed for that purpose by resolution shall attend at........................in the said municipality for the purpose of appointing, and, if requested so to do, shall appoint by writing signed by him, two persons to attend at the final summing up of the votes by the Clerk, and one person to attend at each polling place on behalf of the persons interested in and promoting the proposed By-law, and a like number on behalf of the persons interested in and opposing the proposed By-law.

3. On the...........day of.............A.D. 19......., at the hour of................o'clock in the...........noon, at........................, in the said municipality, the Clerk of the said municipality shall attend and sum up the votes given for and against the proposed By-law.

Note.—When a proposed By-law is submitted on the day of the annual election for the Municipal Council, the following shall be substituted for Section 1 of the foregoing By-law:—

1. The votes of the electors of the Corporation of the........ ....of..........................shall be taken upon the said proposed By-law at the same time and at the same places as the annual election for the Municipal Council, and the Deputy Returning Officers appointed to hold said election shall take the vote.

FORM 71.

BY-LAW FOR TAKING THE VOTES OF THE ELECTORS ON QUESTIONS.

BY-LAW NO.......

A By-law to provide for taking the votes of the electors on the following question: (*here state question*).

Passed the...........day of............A.D. 19.....

Whereas it is considered desirable and expedient to obtain the opinion of the electors on the following question: (*here state question*), and to pass this By-law for the purpose of enabling the electors to vote on said question;

Be it therefore enacted by the Municipal Council of the Corporation of the.........................of.................... as follows:—

1. The votes of the electors of the Corporation of the........ ....of..........................shall be taken on the said question on the................day of.............. A.D. 19......, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon at the following places, and by the following Deputy Returning Officers, namely: (*here set out the polling places and the names of the Deputy Returning Officers*).

2. On the.............day of..............A.D. 19....., at the hour of..................o'clock in the.........noon, the head of the Council of the said Corporation or some member

of said Council appointed for that purpose by resolution shall attend at......................in the said municipality for the purpose of appointing, and, if requested so to do, shall appoint by writing signed by him, two persons to attend at the final summing up of the votes by the Clerk, and one person to attend at each polling place on behalf of the persons interested in and voting in the affirmative on said question, and a like number on behalf of the persons interested in and voting in the negative on said question.

3. On the..............day of..............A.D. 19....., at the hour of ....o'clock in the........noon, at.........................., in the said municipality, the Clerk of the said municipality shall attend and sum up the votes given in the affirmative and negative on the question.

Note.—When a question is submitted to obtain the opinion of the electors on the day of the annual election for the Municipal Council, the following shall be substituted for section 1 of the foregoing By-law:—

1. The votes of the duly qualified electors of the Corporation of the.............................of...................... shall be taken on the said question at the same time and at the same places as the annual election for the Municipal Council, and the Deputy Returning Officers appointed to hold said election shall take the vote.

FORM 72.

NOTICE TO BE PUBLISHED WITH A COPY OR SYNOPSIS OF A PROPOSED BY-LAW.

Notice.

Take notice that the foregoing is a true copy or synopsis (*as the case may be*) of a proposed By-law of the Corporation of the.......................of...................to be submitted to the votes of the electors on the..................day of....................A.D. 19....., between the hours of nine o'clock in the forenoon and five o'clock in the afternoon at the following places:

(*here state the polling places*).

And that the..............day of.............A.D. 19...., at..................o'clock in the..........noon at.................................in the said municipality has been fixed for the appointment of persons to attend at the polling places, and at the final summing up of the votes by the Clerk.

And that if the assent of the electors is obtained to the said proposed By-law it will be taken into consideration by the Municipal Council of the said Corporation at a meeting thereof to be held after the expiration of one month from the date of the first publication of this notice, and that such first publication was made on the..............day of..............A.D. 19....

........................*Clerk.*

Note 1.—In the case of a money By-law the notice shall contain in addition the following:—

Take notice further that a tenant who desires to vote upon said proposed By-law must deliver to the Clerk not later than the tenth day before the day appointed for taking the vote a declaration under The Canada Evidence Act, that he is a tenant whose lease extends for the time for which the debt or liability is to be created, or in which the money to be raised by the proposed By-law is payable, or for at least twenty-one years, and that he has by the lease covenanted to pay all municipal taxes in respect of the property of which he is tenant other than local improvement rates.

Note 2.—Where the vote is taken on the date of the annual election for the Municipal Council the first paragraph of the foregoing notice may read:—

Take notice that the foregoing is a true copy or synopsis (*as the case may be*) of a proposed By-law of the Corporation of the.........................of..................to be submitted to the votes of the electors at the same time and at the same places as the annual election for the Municipal Council, and the Deputy Returning Officers appointed to hold the said election shall take the vote.

FORM 73.

Notice to be Published with a Statement of a Question Submitted.

Notice.

Take notice that the foregoing is a correct statement of the question to be submitted to the votes of the electors on the ....day of...................A.D. 19......, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon at the following places:

(*here state the polling places*).

And that the............day of.............A.D. 19.... at....................o'clock in the................noon, at ...., in the said municipality, has been fixed for the appointment of persons to attend at the polling places and at the final summing up of the votes by the Clerk.

.......................*Clerk.*

Note.—Where the vote is taken on the date of the annual election for the Municipal Council the first paragraph of the foregoing notice may read:—

Take notice that the foregoing is a correct statement of the question to be submitted to the votes of the electors at the same time and at the same places as the annual election for the Municipal Council, and the Deputy Returning Officers appointed to hold the said election shall take the vote.

Note.—Forms numbers 70, 71, 72 and 73, were approved by the Board on 11th September, 1913.

The following forms have been prescribed by The Ontario Railway and Municipal Board with respect to the affidavits to be filed in support of an application to the Board under Section 295.

FORMS A, B, AND C, RELATE TO LOCAL IMPROVEMENT BY-LAWS.

AFFIDAVIT.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

FORM "A"—WORK ON PETITION.

In the matter of the Application, under Section 295 of "The Municipal Act," of the Corporation of........................ for validation of its By-law No.................and the debentures thereunder, ($......................for................ ....).

I,....................................of the............ of.......................in the county of................... make oath and say:—

1. That I am the Municipal Clerk of the said Corporation;

2. That a Petition for................................... signed by at least two-thirds in number of the owners, representing at least one-half of the value of the Lots liable to be specially assessed, was on the................day of.................. 19....., lodged with me and found by me to be sufficient, and was duly certified as such on the.........................day of........................., 19....., under section 16 of "The Local Improvement Act," and that a true copy of my certificate is now shown to me and marked Exhibit "A" hereto;

3. That the Council of the said Corporation did, by By-law passed on the....................day of.................... by a vote of...........................of all the members, provide that the cost of the work should be apportioned and borne as follows:—

....

and that a copy of such By-law is now produced and shown to me and marked Exhibit "B" hereto;

4. That the said Council did, by By-law No............., passed on the................day of................provide for the making of the reports, statements, estimates, and special assessment roll for the said work;

5. That before passing the By-law for undertaking the work, the said Council did procure to be made a Report as follows:—(*Shew that section 30 was complied with, giving all details*);

6. That before a Special Assessment was imposed the said Council did procure to be made a Special Assessment Roll in which were entered (*Shew that section 31 was strictly complied with, giving details*).

7. That before a Special Assessment was imposed a Sittings of the Court of Revision for the hearing of complaints against the proposed Special Assessment was duly held in accordance with sections 33, 34, 35, 36 and 37 of "The Local Improvement Act," that Ten days' Notice of the said Sitting was duly given by publication in the.......................newspapers published at...

and at least Fifteen days before the day appointed for the Sittings a Notice was mailed to the Owner of every Lot to be specially assessed, a true copy of which Notice so mailed is marked Exhibit "C" hereto, and that thereafter (such corrections having been made therein as were necessary to give effect to the decisions of the Court of Revision) I did on the......................day of...........................duly certify the Special Assessment Roll in accordance with Section 38 of "The Local Improvement Act," and that a true copy of the said Special Assessment Roll as so certified by me is now shewn to me and marked Exhibit "D" hereto:

8. That there was no appeal to a Judge of the County Court from any decision of the Court of Revision respecting the said Special Assessment Roll (*or as the case may be, setting forth the facts fully*):

9. That now produced and shewn to me and marked Exhibits

"E,"..................................hereto are By-laws Nos.............................of the said Council, providing respectively as follows:—

Exhibit "E"—By-law No...............to authorize the construction of...................................

Exhibit "F"—By-law No.................to provide for borrowing...

Exhibit "G"—By-law (if any) No...............to consolidate..

10. That the following defects or irregularities in, or in the proceedings taken in connection with, the said Petition, Special Assessment Roll or By-laws Nos.............................. are submitted to the said Board for consideration:—

....

11. That there is no other irregularity or defect in the said Petition or Special Assessment Roll, or By-laws Nos........... ....or any of them, or in the proceedings had or taken in connection with the same, or any of them.

12. That no action or proceeding is pending in which the validity of the said By-laws or any of them is called in question, or by which it is sought to quash the same, and I have no knowledge or notice of any kind of any intended action or proceeding of such a nature.

Sworn, before me, at the..............
of...........................in the
coun y of..........................
this.............day of............
19.....

AUTHORS' NOTE.—*Where the by-law is for the construction, enlargement or extension of a sewer on the recommendation of the Provincial Board of Health or of the Local Board of Health, the recommendation should be made an Exhibit, and the affidavit should show that the requirements of Section 10 of the Local Improvement Act have been complied with.*

FORM "B"—WORKS WITHOUT PETITION,

Under Sections 5, 9 or 10.

Use foregoing Form "A" so far as applicable; also prove Vote of Council (Secs. 5, 9, 10); and also prove publication of Notice, giving dates, name and description of newspaper (Sec. 11), and make a true copy of the Notice an Exhibit.

FORM "C"—ON THE INITIATIVE PLAN.

Use foregoing Form "A" so far as applicable; also prove publication of Notice (Sec. 13), giving dates and name and description of newspaper, prove service of Notice, with full details (Sec. 13), and make a true copy of the Notice an Exhibit. State whether Petition filed against the work, and shew fully how disposed of.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

(Application under Section 295 of "The Municipal Act.")

AFFIDAVIT RE BONUS OR MONEY BY-LAW.

(See also Sections 260 to 296 and 395-7.)

In the matter of the Application of the Corporation of ....under section 295 of "The Municipal Act," for validation of its By-law No................. and the Debentures thereunder ($..........for............... ....).

I,............................of the...................
on the.........................of.........................
make oath and say:—

1. That I am the Municipal Clerk of the said Corporation.

2. That the Municipal Council of the said Corporation did on the......................day of........................ finally pass By-law No................a true and certified copy of which is hereto annexed marked "A," providing for a poll on said (then proposed) By-law No............

3. That a copy*.......................of said (then proposed) By-law, together with a Notice, complying with section 263 (5) and (6) of the said Act (a true copy of which.......... ....and Notice is hereto annexed marked "B") was published once a week for three successive weeks in the issues of.............................a..............newspaper published at...................of the dates following:—

....

*(*If a Synopsis published; make a true copy of same, and the Notice published therewith, an Exhibit to Affidavit.*)

4. That the requirements of section 264 of "The Municipal Act," were duly complied with.

5. That the said By-law No..............was adopted by the persons qualified to vote thereon at a poll duly held according to law on the...............day of..............A.D. 19..., there being..................valid votes in favour of......... ....and....................valid votes against the said By-law, the total possible valid vote being.............

6. That after I had (at the time and place provided for in said By-law No............) summed up the number of votes cast, I declared the result of the voting and did forthwith certify to the Council the result of the voting and the total number of persons entitled to vote upon the By-law, and a true copy of my Certificate is hereto annexed marked "C."

7. That a scrutiny of the votes was not applied for and after the expiration of two weeks from the declaration of the result of the voting, and within six weeks after the voting took place, the Council of the said Corporation duly passed the said By-law No...............

8. That the said By-law No...............with the Notice mentioned in section 281 of the said Act was duly promulgated by publication at least once a week for three successive weeks in the issues of..................a.................newspaper published at....................of the dates following:—

....

and that a true copy of the said By-law and Notice as so published is hereto annexed marked "D."

9. That within four weeks after the passing of the said By-law the same was duly registered on the...................day of....................19...., in the proper Registry Office, being the Registry Office for..............as Number.........
in..........................and that a Notice of such registration (a true copy of which Notice is hereto annexed marked "E") was immediately after such Registration published at least once a week for three successive weeks in the issues of..........
................newspaper, a................newspaper published at.................aforesaid, of the dates following:—

....

10. That the recitals in the said By-law No.............are true and in compliance with section 288 of the said Act, and duly and correctly set forth:—

(*a*) The amount of the debt to be created, namely, $.........
.................and in brief and general terms the object for which it is to be created, namely

....

(*b*) The amount of the whole rateable property of the municipality, according to the last revised................

assessment roll,...................................
namely $.. ....

(*c*) The amount of the debenture debt of the Corporation,
namely $..................and that...............
of the principal or interest is in arrear.

and that the said By-law provides for raising in each year, during the currency of the debentures or any of them, a specific sum or sums sufficient to pay (*give particulars here*).

11. That no motion, action or proceeding is pending in which the validity of the said By-laws or either of them is called in question, or by which it is sought to quash the same, and I have no knowledge or notice of any kind of any intended motion, action or proceeding of such a nature.

12. That there is no irregularity in, or in connection with, the the vote or any of the proceedings prior to the passing of either of the said By-laws or in, or in connection with, the said By-laws themselves, or either of them, or in, or in connection with, the passing, promulgation or registration of the said By-law No...... except (*here set forth specifically and in detail every irregularity for consideration by the Board*):—

....

In case By-law grants a Bonus to Manufacturers, etc.

13. That the said By-law complies with, and does not in any way contravene any of the provisions of section 396 of "The Municipal Act, 1913," and the Bonus granted thereby, together with bonuses already granted, will not require an annual levy for the payment of principal and interest exceeding ten per cent. of the total amount required to be raised by taxation for the year next preceding the passing of the said By-law No..........

Sworn before me at the...............
..............of...................
in the county of.....................
this...........day of..............
19.....

FORM RE PUBLIC SCHOOL BY-LAW.

(Section 295 of "The Municipal Act.")

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

In the Matter of the Application of the Corporation of the Township of.................... in the.................... of.............................. for validation of its By-law No............ and the debentures thereunder ($............ for..).

I,...................... of the Township of............ in the.................... of.................... make oath and say:—

1. That I am the Clerk of the Council of the Municipality of the Township of.......... in the............ of.............

2. That the Board of Public School Trustees for School Section Number........... of the Township of.................... in the.............................. of........................ make due application, a true copy of which is hereto annexed marked "A," to the Council of the Municipality of the Township of.............................. under Section 44 of the Public Schools Act for the issue of debentures to the amount of......... .... for the purpose of.................... in the said School Section and proved to the satisfaction of the Council that the proposal for such loan had been submitted by the Trustees to and sanctioned at a special meeting of the ratepayers of the said Section duly called for that purpose.

3. That on the.................. day of................. A.D. 19......, the said By-law No............., providing for the issue of the said debentures was duly passed by the said Council, and was duly signed by the Reeve and Clerk and the corporate seal was affixed.

4. That a copy of the said By-law is annexed to this my affidavit, marked with the letter "B," and that such copy is a true copy including the signatures thereto.

5. That the said By-law being Number..............of the By-laws of the Municipality of the Township of...............
was duly registered within four weeks of the passing thereof on the..................day of..................A.D. 19......,
as Number..................in the Registry Office for the
.....................of..........................
at.......................being the Registry Division in which the Municipality of the Township of........................
is situate.

6. That notice of the passing of said By-law was immediately after the registration thereof published in the..................
...................., a public newspaper published in the Town
of..............................in the..................
of.......................being the..................Town
of the.......................in which the said municipality
is situated, in the issues of such newspaper which were published
on........................,..............................
being at least once a week for three successive weeks, and that a true copy of the said Notice is hereto annexed marked "C."

7. That the said By-law is in full force and effect and has not been altered or repealed, and no action, motion, or proceeding, in which the validity of the said By-law has been called in question or by which it is sought to quash the same or any part thereof, has been commenced or is pending, and no notice of any such motion, action or proceeding has been given, and I have no reason to believe that any such motion, action or proceeding will be made or taken.

8. That all the recitals in the said By-law are true in substance and in fact, and comply with Section 288 of "The Municipal Act, 1913."

9. That there is no irregularity in, or in connection with, the said By-law No..............., or the proceedings had and taken in connection therewith, except (*set forth fully and specifically every irregularity for consideration by the Board*):—

Sworn before me, at the.............
............of................in the
............of..................this
..............day of..........19...

(*If By-law be passed under Section 43, make necessary changes in above Affidavit.*)

LOCAL IMPROVEMENTS.

An Act respecting Local Improvements.

R.S.O. c. 193, as amended by 4 Geo. V. c. 21, ss. 41 43 and 5 Geo. V. c. 35.

Where provisions of this Act are similar to those of The Municipal Act, the notes in the latter Act are not repeated in the notes to this Act, and the same observation applies to notes as to the meaning of words used in both Acts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Local Improvement Act.* 2 Geo. V. c. 44, s. 1. **Short title.**

INTERPRETATION.

2. In this Act:— **Interpretation.**

(*a*) "Bridge" shall include a viaduct, a culvert, a subway and an embankment and shall also include a pavement on a bridge. **"Bridge."**

(*b*) "Clerk" shall mean and include the clerk of the municipality and any officer or person authorized or required by the council to perform any duty which under this Act is to be or may be performed by the clerk. **"Clerk."**

(*c*) "Constructing" and "construction" shall include reconstructing and reconstruction, wholly or in part, when the lifetime of the work has expired. 1 Geo. V. c. 58, s. 2 (*a-c*). **"Constructing." "Construction."**

(*d*) "Corporation" shall mean the corporation of a municipality. 3-4 Geo. V. c. 44, s. 1 (1). **"Corporation."**

(*e*) "Corporation's portion of the cost" shall mean that part or proportion of the cost of a work which is not to **"Corporation's portion of the cost."**

be specially assessed, but is payable by the corporation. 1 Geo. V. c. 58, s. (2) (*e*).

"Council." (*f*) "Council" shall mean the council of the corporation of a municipality. 3-4 Geo. V. c. 44, s. 1 (2).

"County." (*g*) "County" shall include "district." 1 Geo. V. c. 58, s. 2 (*g*).

"Curbing." (*h*) "Curbing" shall include a curbing of any material in or along a street, whether constructed in connection with or apart from the laying down of a pavement or sidewalk, or with or without a projection for the purpose of a gutter.

"Engineer." (*i*) "Engineer" shall include an officer or person authorized or required by the council to perform any duty which under this Act is to be or may be performed by an engineer.

"Frontage." (*j*) "Frontage," when used in reference to a lot abutting directly on a work, shall mean that side or limit of the lot which abuts directly on the work.

"Judge of the County Court." (*k*) "Judge of the County Court" shall mean and include the Judge and a junior Judge of a County or District Court.

"Lifetime." (*l*) "Lifetime," as applied or applicable to a work, shall mean the lifetime of the work as estimated by the engineer, or in case of an appeal as finally determined by the Court of Revision or the Judge, as the case may be.

"Lot." Rev. Stat. c. 195. (*m*) "Lot" shall mean a subdivision or a parcel of land which by *The Assessment Act* is required to be separately assessed, and "lots" shall mean more than one lot as so defined. 1 Geo. V. c. 58, s. 2 (*i*-*n*).

"Municipality." (*n*) "Municipality" shall include a union of townships, a municipality composed of more than one township, a township, a city, a town, a village, but not a county. 1 Geo. V. c. 58, s. 2 (*o*); 3-4 Geo. V. c. 44, s. 1 (4).

(*o*) "Owner" and "owners" shall mean respectively the person or persons appearing by the last revised assessment roll of the municipality to be the owner or owners of land, and, except in the case of a township, shall include a tenant for years, the unexpired term of whose tenancy including any renewal thereof to which he is entitled extends for not less than the period during which the special assessment for the work is to be made, if by the terms of his tenancy he would be liable for the payment of the special assessment for the work, but shall not include a person who is, or is assessed as, owner, where there is a tenant for years of the land, who is an owner within the meaning of this clause. "Owner." "Owners."

(*p*) "Owners' portion of the cost" shall mean that part or portion of the cost of a work which is to be specially assessed upon the land abutting directly on the work or upon land immediately benefited by the work. "Owners' portion of the cost."

(*q*) "Pavement" shall include any description of pavement or roadway. "Pavement."

(*r*) "Paving" shall include macadamizing, planking, and the laying down or construction of any description of pavement or roadway and the construction of a curbing. "Paving."

(*s*) "Publication" and "published" shall mean insertion in a newspaper published in the municipality, if there is a newspaper published therein, or, if there is none, then in a newspaper published in the county in which the municipality is situate. "Publication". "Published."

(*t*) "Sewer" shall include a common sewer and a drain. "Sewer."

(*u*) "Sidewalk" shall include a footway and a street crossing. "Sidewalk."

(*v*) "Specially assessed" shall mean specially rated for or charged with part of the cost of a work. "Specially assessed."

(*w*) "Street" shall include a lane, an alley, a park, a square, a public drive, and a public place, or a part of any of them. "Street."

"Value."

(*x*) "Value" shall mean assessed value, exclusive of buildings, according to the last revised assessment roll of the municipality.

"Work."

(*y*) "Work" shall mean a work or service which may be undertaken as a local improvement.

"Work undertaken."

(*z*) "Work undertaken" shall mean a work which is undertaken as a local improvement. 1 Geo. V. c. 58, s. 2 (*p-aa*).

WORKS WHICH MAY BE UNDERTAKEN AS LOCAL IMPROVEMENTS.

Works which may be effected as local improvements.

3.—(1) A work of any of the characters or descriptions hereinafter mentioned may be undertaken by the council of a corporation as a local improvement, that is to say:

(*a*) Opening, widening, extending, grading, altering the grade of, diverting or improving a street;

(*b*) Opening or establishing a new street;

(*c*) Constructing a bridge as part of a street;

(*d*) Constructing, enlarging, or extending a sewer;

(*e*) Paving a street;

(*f*) Constructing a curbing or a sidewalk in, upon or along a street;

(*g*) Constructing or maintaining a boulevard where a part of a street has been set apart for the purposes of a boulevard;

(*h*) Sodding any part of and planting, maintaining and caring for trees, shrubs and plants upon and in a street;

(*i*) The extension of a system of water, gas, light, heat or power works owned by the corporation, including all such works as may be necessary for supplying water, gas, light, heat or power to the owners of land, for whose benefit such extension is provided;

(*j*) Acquiring, establishing, laying out and improving a park or square not having a greater area than two acres, or a public drive;

(*k*) Constructing, on petition only, retaining walls, dykes or breakwaters along the banks of rivers, but this clause shall only apply to a city or town. 1 Geo. V. c. 58, s. 3 (1).

( ) In the case of cities and towns only, constructing and erecting on petition only, on any street or part of a street, equipment, plant and works for the purpose of supplying electric light or power, including standards and underground conduits and wires, to the extent to which the cost of the same exceeds the cost of the equipment, plant and works which would otherwise be provided at the expense of the corporation at large. 2 Geo. V. c. 44, s. 2; 3-4 Geo. V. c. 44, s. 2.

(*m*) Constructing a subway under a railway. 5 Geo. V. c. 35, s. 1.

Where a corporation has passed a local improvement by-law for the construction of a certain class of road, it cannot proceed to construct a different one, and an action will lie to compel the corporation to carry on the work in accordance with the by-law or in the alternative for relief from the payment of any special rates which may be levied in respect of the work: Arbuthnot v. Victoria (1910), 15 B.C.R. 209.

Where a by-law has been duly passed for the widening of a street as a local improvement, the corporation is bound to proceed with the work notwithstanding that it involves the destruction of sidewalks which the corporation is by statute required to keep in repair: Todd v. Victoria (1910), 15 W.L.R. 502 (B.C.).

Commencing of powers as to street lighting.

(1*a*) The power conferred on towns by clause (*l*) of subsection 1, shall for all purposes be deemed to have been conferred on the 16th day of April, 1912. 4 Geo. V. c. 21, s. 41.

(2) Nothing in this section shall extend or apply to a work of ordinary repair or maintenance. 1 Geo. V. c. 58, s. 3 (2).

Works which may be undertaken in connection with a pavement or sewer.

4.—(1) Where the work is the construction of a pavement, the council, before proceeding with the work, may make all necessary private drain connections from the main sewer to the street line on either or both sides, and may also lay all necessary water mains, service pipes and stop cocks and make all necessary alterations in the same, and where gas works are owned by the corporation the council may lay all necessary gas mains, service pipes and stop cocks and make all necessary alterations in the same, and where the work is the construction of a sewer the council may make all necessary private branch drains and connections to the street line on either or both sides; but the cost of a water or gas service pipe or stop cock and any alteration of the same and the cost of a private branch drain and connection shall be specially assessed only upon the particular lot to serve which it was constructed or effected. 5 Geo. V. c. 35, s. 2.

To be part of work of construction.

(2) The works mentioned in subsection 1 shall be deemed part of the work of construction of the pavement or sewer in all respects except as to the manner in which the cost of them is to be specially assessed as provided by that subsection.

How to be assessed.

(3) The amount to be assessed against each lot in respect of a private drain connection, water service pipe or gas connection shall be the cost thereof from the centre of the street to the street line, whether or not the sewer or water or gas main is laid in the centre of the street. 1 Geo. V. c. 58, s. 4 (2-3).

Construction of private drain connections without petition.

5. Where a sewer has been or may hereafter be constructed, the council, by a vote of two-thirds of all the members thereof at any general or special meeting, may undertake the construction of private drain connections from the sewer to the street line on either or both sides as a local improvement without any petition therefor, and the cost of each private drain connection shall be specially assessed upon the particular lot for or in connection with which it is constructed, and the owners of the land shall not have the right of petition provided for by section 13, and the provisions of subsection 3 of section 4 shall apply. 1 Geo. V. c. 58, s. 5.

Purchase by township of works already constructed.

6. In a township [or town in unorganized territory] where the owners of land have constructed a work which might have been undertaken as a local improvement, the council, upon the petition of three-fourths in number of the owners of the land to be immediately benefited by the acquisition of the work, representing at least two-thirds of the value of such land, may acquire the work at a price agreed upon or to be determined by arbitration under the provisions of *The Municipal Act*, and the purchase money may be provided by the council, and may be assessed in like manner as if the work were a work which the council were undertaking as a local improvement, and all the provisions of this Act shall apply as if the council were undertaking the work so acquired as a local improvement. 1 Geo. V. c. 58, s. 6; 5 Geo. V. c. 35, s. 3.

Rev. Stat. c. 192.

The words in brackets were added by 5 Geo. V. c. 35, s. 3.

Approval of Ont. Ry. and Municipal Bd. required in the case of certain works.

7.—(1) Where the work is the opening, widening, or extension of a street or the construction of a bridge, and the cost of the work as estimated by the engineer will exceed $50,000, any person whose land is to be specially assessed may, within ten days after notice to him of the intention of the council to undertake the work, give notice that he objects to the work being undertaken upon the ground that it is a work for the general benefit of the municipality or of a section or district thereof, and if such notice is given the work shall not be undertaken without the approval of "The Ontario Railway and Municipal Board."

Approval may be withheld.

(2) If the board, after notice to the corporation and to all persons interested and after hearing such of them as shall request to be heard, determines that for the reasons mentioned in subsection 1, or either of them, it is proper to do so the board may withhold its approval.

Apportionment of cost of work.

(3) If the board determines that the cost of the work should be borne by the corporation or by the owners of the land situate within a section or district of the municipality, the board may make an order so declaring, and in that event the council may, notwithstanding the provisions of this Act or of any by-law passed under the authority of this Act, undertake and proceed with the work at the cost of the corporation or of the section or district thereof mentioned in the order, as the case may be.

Or may direct the cost to be charged upon the abutting lots.

(4) The board, instead of making an order under subsection 3, may direct that if the work is undertaken such part of the cost of it as the board may deem just shall be charged upon the lots abutting directly upon the work, in accordance with the provisions of this Act and that the residue of it shall be borne by the corporation or partly by the corporation and partly by a section or district of the municipality in such proportions as the board may direct, and if the council undertakes the work, it shall conform with the directions of the order so made.

Special assessments to be made by the council.

(5) The special assessment upon the lots shall not be made by the board, but by the council, in accordance with the provisions of this Act. 1 Geo. V. c. 58, s. 7.

PROCEDURE FOR UNDERTAKING WORK.

Methods of undertaking works.

8.—(1) A by-law may be passed for undertaking a work as a local improvement

- (*a*) On petition, or
- (*b*) Without petition, on the initiative of the council, hereinafter called the initiative plan, except in the case of a park or square or public drive mentioned in clause (*j*) of section 3, or
- (*c*) On sanitary grounds, as mentioned in section 10, or
- (*d*) Without petition in the case mentioned in sections 5 and 9.

One by-law may include several works.

(2) Instead of passing separate by-laws for each work the council may pass one by-law in respect of several works. 1 Geo. V. c. 58, s. 8.

A member of a council is not disqualified from voting upon a proposed by-law for the construction of a sewer merely because he owns property fronting on the street in which it is to be built, and has, therefore, a large interest in the proposed drainage. The principle that a member of a council is not disqualified merely because he has an interest in common with the other ratepayers applies as well to the case of a local improvement by-law where the community of interest is only with the ratepayers of a section of the municipality, as where all the ratepayers will be affected by the proposed by-law: Elliott v. St. Catharines (1908), 18 O.L.R. 57, 12 O.W.R. 653, 13 O.W.R. 89.

In this case In re McLean and Ops (1880), 45 U.C.R. 325, was discussed and followed. It was there held that no interest which springs solely from his being a ratepayer can disqualify a councillor or member of the Court of Revision "from performing his duty as such": p. 335. The case was one of a drainage by-law, and a member of the council was alleged to be largely interested in the property to be drained.

In McLean v. Sault Ste. Marie (1910), 2 O.W.N. 41, the defendants were restrained from constructing a sidewalk as a local improvement until a by-law should be passed in accordance with the requirements of The Municipal Act authorizing its construction.

In this case a by-law had been passed with the assent of the electors authorizing the issue of debentures for payment of one-third of the cost of certain local improvements, viz., 33 sidewalks, of which the sidewalk was one, but no by-law had been passed for undertaking the work.

Construction of certain works on a two-thirds vote of council without petition.

9.—(1) Notwithstanding anything to the contrary contained in this or any other Act or in any by-law of the municipality, where the council determines and by by-law, passed at any general or special meeting by a vote of two-thirds of all the members thereof, declares that it is desirable that the construction of a curbing, pavement, sidewalk, sewer or bridge, or the opening, widening, extending, grading, altering the grade of, diverting or improving a street or the extension of a system of waterworks, should be undertaken as a local improvement, the council may undertake the work without petition, and the owners of the land shall not have the right of petition provided for by section 13. 1 Geo. V. c. 58, s. 9 (1); 2 Geo. V. c. 44, s. 3; 3-4 Geo. V. c. 44, s. 3.

Objection to construction of work on two-thirds vote of council.

(2) Where the council proceeds with any local improvement under subsection 1, a majority of the owners representing at least one-half the value of the lots which are to be specially assessed therefor, being dissatisfied with such local improvement or with the manner in which it has been undertaken, may by petition apply to the Ontario Railway and Municipal Board for relief, and the board may thereupon investigate the complaint and make such order with respect to the local improvement as may seem proper, and after notice to the clerk of the municipality of the application and pending its determination by the board, the council shall not proceed with the local improvement work.

In determining whether a petition is sufficiently signed, owners of property exempt from taxation are not to be taken into account although entered on the assessment roll as owners of it: Macdonell v. Toronto (1902), 4 O.L.R. 315.

No such question can arise now, as it is only the lots liable to be specially assessed for the work that are to be taken into account.

Buildings must be taken into account in ascertaining the value of the lots: Ib.

An application under this subsection cannot be made after the work has been actually executed: In re Kemp and Toronto (1915), 7 O.W.N. 704, 21 D.L.R. 833 (a decision of the Municipal Board).

Sufficiency of petition.

(3) The sufficiency of such petition shall be determined in the manner provided by section 16. 4 Geo. V. c. 21, s. 42.

Filing of petition.

(4) Such petition shall be deposited with the Secretary of the Ontario Railway and Municipal Board within twenty-one days after the first publication of notice of the council's intention to undertake the work. 5 Geo. V. c. 35, s. 4.

Construction of sewer on recommendation of Board of Health.

10. Where the council, upon the recommendation of the Provincial Board of Health or of the Local Board of Health of the municipality, determines and, by by-law passed at a regular or special meeting of the council by vote of two-thirds of all the members thereof, declares that the construction, enlargement or extension of a sewer as a local improvement is necessary or desirable in the public interest on sanitary grounds, the council may undertake the work without petition, and the owners of the land shall not have the right of petition provided for by section 13. 1 Geo. V. c. 58, s. 10.

Publication of notice of intention.

11. Where it is intended to proceed under sections 5, 9 or 10, the council shall not be deemed to proceed on the initiative plan, but, before passing the by-law for undertaking the work, shall cause notice of its intention, Form 1, to be published. 1 Geo. V. c. 58, s. 11.

Number of signatures to petition required.

12. The petition for a work shall be signed by at least two-thirds in number of the owners representing at least one-half of the value of the lots liable to be specially assessed. 1 Geo. V. c. 58, s. 12.

See notes to s. 9 (2).

13.—(1) Where the council proceeds on the initiative plan, notice of the intention of the council to undertake the work, Form 2, shall be given by publication of the notice and by service of it upon the owners of the lots liable to be specially assessed; and unless within one month after the first publication of the notice a majority of the owners representing at least one-half of the value of the lots which are liable to be specially assessed petition the council not to proceed with it the work may be undertaken as a local improvement.

Initiative plan—publication and service of notice of intention to construct work.

(2) The notice shall be sufficient if it designates by a general description the work to be undertaken and the street or place whereon or wherein, and the points between which the work is to be effected, and the number of the instalments by which the special assessment is to be payable.

Contents of notice.

(3) The notice may relate to and include any number of different works. 1 Geo. V. c. 58, s. 13 (1-3).

May cover different works.

A by-law which imposed assessments for a local improvement initiated by the council was quashed because the work done and the times of payment for it were different from those set out in the notice of the intention to do the work: In re Gillespie and Toronto (1892), 19 A.R. 713, affirmed by Supreme Court of Canada, 1st May, 1893, Cassels' Digest 893; but see s. 38, since enacted.

Where the notice to the owner did not state the number of years in which the special assessment was to be payable, it was held to be fatally defective: In re Hodgins and Toronto (1909), 1 O.W.N. 31, 14 O.W.R. 642; but see s. 38, since enacted.

(4) The notice may be served upon the owner

Manner of service.

(*a*) Personally, or

(*b*) By leaving it at his place of business or of residence if within the municipality, or

(*c*) By mailing it at a post office addressed to the owner at his actual place of business or of residence, if known, or at his place of business or residence as set forth in the last revised assessment roll of the municipality, or

(*d*) If the place of business and of residence of the owner are not known, by leaving the notice with a grown-up person on the lot of the owner which is liable to be specially assessed, if there is a grown-up person residing thereon. 1 Geo. V. c. 58, s. 13 (4); 2 Geo. V. c. 44, s. 5.

Where residence, etc., unknown.

(5) If the place of business and of residence of the owner are unknown, and there is no grown-up person residing on the lot of the owner which is liable to be specially assessed, service upon the owner shall not be requisite.

Where residence, etc., is not in assessment roll.

(6) If the place of business or of residence of the owner do not appear upon the assessment roll, the owner may be treated and dealt with as an owner whose place of business and of residence are unknown.

Proof of publication and service.

(7) Publication and service of the notice may be proved by affidavit or statutory declaration and the affidavit or statutory declaration, before the passing of the by-law by which the special assessment is made to defray the cost of the work, shall be *prima facie* evidence, and after the passing of the by-law shall be conclusive evidence of the matters set forth in the affidavit or statutory declaration. 1 Geo. V. c. 58, s. 13 (5-7).

It was held in In re McCrae and Brussels (1904), 8 O.L.R. 156, 3 O.W.R. 868, reversing (1904), 7 O.L.R. 146, 3 O.W.R. 233, that the provisions of s. 669 (1*a*) of 3 Edw. VII. c. 19 as to personal service of the notice was not directory, but imperative, and the by-law was quashed because two of the persons who were liable to be specially assessed had not been served with the notice.

Subsection 1*a* required that the notice should be given to the owners by personal service or by leaving the notice at the places of business or residence of the owners.

It will be observed that this section contains more complete provisions as to the mode of service than were contained in subsection 1*a*.

The defect which was held in this case to be fatal to the by-law would be cured by the provisions of s. 38.

Effect of petition against work.

14.—(1) Where the council has proceeded on the initiative plan and has been prevented from undertaking a work by reason of a petition having been presented under the provisions of section 13, the council shall not proceed on the initiative plan with regard to the same work for a period of two years after the presentation of the petition; Provided always that in a municipality in which a by-law passed under the provisions of section 52 is in force the prohibition contained in this section shall not prevent the council from again proceeding on the initiative plan with regard to such work if it is of a different kind or description from or less expensive than that originally proposed to be undertaken. Proviso.

(2) Nothing in this section shall prevent the council from exercising the power conferred by section 9. 1 Geo. V. c. 58, s. 14. Powers conferred by section 9 not affected.

15. There shall be set out opposite to every signature to the petition for or against a work a description of the lot of which the petitioner is the owner by its number or such other description as will enable the clerk to identify it. 1 Geo. V. c. 58, s. 15. Lot of petitioner to be described.

16.—(1) The sufficiency of a petition for or against a work shall be determined by the clerk, and his determination shall be evidenced by his certificate and when so evidenced shall be final and conclusive. Clerk to determine sufficiency of petition.

Before the determination of the clerk as to the sufficiency of the petition was made final and conclusive, it was held that the Court has no power to interfere except in the case of fraud or *mala fides:* In re Michie and Toronto (1862), 11 U.C.C.P. 379.

(2) Where the sufficiency of a petition has been determined by the clerk it shall be deemed to have been and to be a sufficient petition notwithstanding that changes may be made by the Court of Revision or by the Judge in the lots to be specially assessed which have the effect of increasing or reducing the number of the lots. What owners to be counted.

(3) When it is necessary to determine the value of any lot and the same cannot be ascertained from the proper assessment roll by reason of the lot not having been separately assessed, or for any other reason, the clerk shall fix and determine the value of such lot and the value thereof as so fixed and determined shall be deemed for the purpose of this Act to be assessed value thereof, and his determination shall be final and conclusive. Determining value of lots.

Owner whose name is not on roll may petition.

(4) Where a person who is, but does not appear by the last revised assessment roll of the municipality to be, the owner of land is a petitioner, he shall be deemed an owner if his ownership is proved to the satisfaction of the clerk, and if the person who appears by the assessment roll to be the owner is a petitioner his name shall be disregarded in determining the sufficiency of the petition.

Case of joint owners.

(5) Where two or more persons are jointly assessed for a lot, in determining the sufficiency of a petition,

(*a*) They shall be reckoned as one owner only;

(*b*) They shall not be entitled to petition unless a majority of them concur and the signatures of any of them, unless the petition is signed by the majority, shall be disregarded in determining the sufficiency of the petition.

Witnesses.

(6) The clerk, for the purpose of any inquiry pending before him under the provisions of this section, may cause witnesses to be summoned and to be examined upon oath, and any person interested in the inquiry may, for the purpose of procuring the attendance of a witness, cause a subpœna to be issued out of the County Court of the county of which the municipality lies.

Witness fees.

(7) A witness, if a resident of the municipality, shall be bound to attend without payment of any fees or conduct money, and if not a resident of the municipality shall be entitled to fees and conduct money according to the County Court scale.

Complaints to be investigated by County Judge.

(8) Where any person complains to the clerk that his signature to the petition was obtained by fraud, misrepresentation or duress the complaint shall be investigated and determined by a Judge of the County Court, and the clerk shall delay certifying until he has received the finding or report of the Judge upon the complaint, and in determining as to the sufficiency of the petition the clerk shall give effect to such finding or report. 1 Geo. V. c. 58, s. 16.

17. A petition for or against the undertaking of a work shall be lodged with the clerk, and shall be deemed to be presented to the council when it is so lodged. 1 Geo. V. c. 58, s. 17.

Petitions to be lodged with clerk.

18. No person shall have the right to withdraw his name from, and no name shall be added to, a petition after the clerk has certified as to its sufficiency. 1 Geo. V. c. 58, s. 18.

Withdrawal of name from petition.

18*a*. Where a by-law has been heretofore or may hereafter be passed for undertaking any work as a local improvement and the council deem it inadvisable or impracticable to complete the work, the council may by by-law amend such by-law and provide for the carrying out of part only of the work mentioned therein, but all the provisions of this Act shall apply to such partial work as if it had been originally undertaken as one entire work; but such amending by-law shall take effect only on being approved by the Ontario Railway and Municipal Board. 5 Geo. V. c. 35, s. 5.

Power to undertake part of work only.

HOW COST OF WORK TO BE BORNE.

19.—(1) Except as in this Act is otherwise expressly provided, the entire cost of a work undertaken shall be specially assessed upon the lots abutting directly on the work, according to the extent of their respective frontages thereon, by an equal special rate per foot of such frontage sufficient to defray such cost.

Frontage rate.

In Cradock Simpson v. Westmount (1916), Q.R. 49 S.C. 341, 27 D.L.R. 94, the defendant corporation had statutory authority under 8 Edw. VII. c. 89, s. 51, as enacted by 4 Geo. V. c. 77, s. 1, to provide that the cost of making certain improvements and works should be

"Borne and paid by the owners of real estate situate on each side of such street, road, avenue, boulevard, lane, alley, public way or place, or any section or sections thereof, or by the owners of real estate situate within a fixed area or limits specified in such by-law and directly benefitted by such works and improvements, by means of a special assessment made, laid or levied upon the said owners of said real estate according to the frontage of such properties, when such improvements are made, saving, nevertheless, the right of the council to declare, by resolution passed by two-thirds of the members of the whole council, that the said fronting properties shall be assessed only for a certain proportion or percentage of the cost of any such improvements, in the manner hereinafter set forth.

"Such frontage rate may be greater or less upon one side of the street, avenue, boulevard, lane, alley, public way or place, than upon the other side, and may be imposed either at a uniform or varying rate, and either upon the properties fronting upon the improved portion or upon the whole or part of the length of the existing street, avenue or road, or upon the real estate situate within the fixed area or limits specified in such by-laws, and directly benefitted by such works and improvements."

A by-law was passed which provided that the cost of the works should be defrayed at a uniform rate, and the council afterwards, by resolution, provided that, instead of a uniform rate, the cost should be defrayed by a varying rate.

One of the questions was whether the council could by resolution change the by-law, making the rate a varying instead of a uniform rate, and it was held that it could.

Another question was whether separate assessments could be made for defraying the cost of the land and for defraying the cost of the works or one assessment for both should be made after the works were completed, and it was held that separate assessments might be made for the cost of the land without waiting until the works were completed and then making an assessment for the whole cost of land and works.

Items which may be included in cost.

(2) The following may be included in the cost of the work:

(*a*) Engineering expenses;

(*b*) Cost of advertising and service of notices;

(*c*) Interest on temporary loans;

(*d*) Compensation for lands taken for the purposes of the work or injuriously affected by it and the expenses incurred by the corporation in connection with determining such compensation;

(*e*) The estimated cost of the issue and sale of debentures and any discount allowed to the purchasers of them. 1 Geo. V. c. 58, s. 19.

Guarantee of work.

20. Where a contractor is employed to construct a pavement or sidewalk, and the council has required him to guarantee that he will so construct it that it shall, for a period not exceeding ten years, remain in good condition and suitable for safe and comfortable travel, and that he will, when required, make good any imperfections therein due to materials, workmanship or construction, in ascertaining the cost of the work no deduction shall be made from the sum paid to the contractor by reason of such guarantee having been required. 1 Geo. V. c. 58, s. 20.

Corporation's portion of cost.

21. There shall be included in the corporation's portion of the cost:—

(*a*) At least one-third of the cost of a sewer having a sectional area of more than four feet; and

(*b*) The entire cost of all culverts and other works in connection with a sewer or pavement which are provided and are required for surface drainage; and

(*c*) So much of the cost of a work as is incurred at street intersections. 1 Geo. V. c. 58, s. 21.

Apportionment of cost of sewers.

22.—(1) Where the work is the construction of a sewer the council may, by a vote of three-fourths of all the members, provide that a certain sum per foot frontage shall be specially assessed upon the land abutting directly on the work and that the remainder of the cost of such sewer shall be borne by the corporation.

Part to be borne by corporation.

(2) The part of the cost to be borne by the corporation shall not be less than that which, under section 21, is to be included in the corporation's portion of the cost. 1 Geo. V. c. 58, s. 22.

Corporation may assume part of cost of sidewalk or pavement.

23.—(1) The council of the corporation of a municipality in which there is not in force a by-law passed under the provisions of section 52 applicable to the work may, by by-law passed at any general or special meeting by a vote of three-fourths of all the members of the council, provide that such part as to the council may seem proper of the cost of every granolithic, stone, cement, asphalt or brick sidewalk, or of every pavement or curbing constructed as a local improvement which otherwise would be chargeable upon the land abutting directly on the work, shall be paid by the corporation. 1 Geo. V. c. 58, s. 23 (1); 5 Geo. V. c. 35, s. 6.

The only change made in this subsection by 5 Geo. V. c. 35, s. 6, was the substitution of 52 for 51 in the third line.

By-law not to be repealed except by a three-fourths vote.

(2) Such by-law shall not be repealed except by vote of three-fourths of all the members of the council. 1 Geo. V. c. 58, s. 23 (2).

Reduction of assessment of corner lots, etc.

24.—(1) In the case of corner lots and triangular or irregularly shaped lots situate at the junction or intersection of streets a reduction shall be made in the special assessment which otherwise would be chargeable thereon sufficient, having regard to the situation, value and superficial area of such lots as compared with the other lots, to adjust the assessment on a fair and equitable basis.

Of lots unfit for building purposes.

(2) Where a lot is for any reason, wholly or in part, unfit for building purposes a reduction shall also be made in the special assessment which otherwise would be chargeable thereon, sufficient to adjust its assessment as compared with that of the lots fit for building purposes on a fair and equitable basis.

How reduction to be made.

(3) The reduction shall be made by deducting from the total frontage of the lot liable to the special assessment so much thereof as is sufficient to make the proper reduction, but the whole of the lot shall be charged with the special assessment as so reduced.

Reduction to be borne by corporation.

(4) The amount of any reduction made in the assessment of any lot under the provisions of this section shall not be chargeable upon the lots liable to be specially assessed, but shall be paid by the corporation. 1 Geo. V. c. 58, s. 24.

Assessment of cost of sidewalk or curb.

25. Where the work undertaken is a sidewalk or curbing, only the land abutting on that side of the street upon which the work is constructed shall be specially assessed. 1 Geo. V. c. 58, s. 25.

Assessment of non-abutting land for cost of certain sewers.

26.—(1) Where the work is a sewer and in order to afford an outlet for the sewage for any land not abutting directly on the work or for the drainage of it the sewer is of a larger capacity than is required for the purpose of the abutting land such other land may be specially assessed for a fair and just proportion of the cost of the work.

(2) In the cases provided for by subsection 1, that part of the cost of the work for which the abutting land is to be specially assessed shall be assessed upon it in the manner provided by section 19, and that part of the cost for which such other land is to be specially assessed shall be assessed upon it in the manner provided by sections 28 and 29. 1 Geo. V. c. 58, s. 26.

Method of assessment.

27.—(1) Where the work is the construction of a bridge or the opening, widening, extending, grading, altering the grade of, diverting or improving a street, and the council is of opinion that for any reason it would be inequitable to charge the cost of the work on the land abutting directly thereon, the council may provide for the payment by the corporation of such part of the cost, as to the council may seem just, and so much of the residue thereof as may seem just may be specially assessed upon the land abutting directly on the work, and so much of such residue as may seem just on such other land as is immediately benefited by the work.

Apportionment of cost of a bridge or the opening, etc., of a street.

(2) In the cases provided for by subsection 1, that part of the cost of the work for which the abutting land is to be specially assessed shall be assessed thereon in the manner provided by section 19, and that part of the cost for which land not abutting directly on the work is to be specially assessed shall be assessed thereon in the manner provided by sections 28 and 29. 1 Geo. V. c. 58, s. 27.

Method of assessment.

28. Where land not abutting directly upon a work is to be specially assessed, if the whole of it is equally benefited, the portion of the cost to be borne by such land shall be specially assessed upon the lots according to the extent of their frontage by an equal special rate per foot of such frontage. 1 Geo. V. c. 58, s. 28.

Assessment of non-abutting land unequally benefited.

29. Where land not abutting directly upon a work is to be specially assessed, and the whole of it is not equally benefited, such land shall be divided into as many districts or sections as there are different proportions of benefit and so that a district or section shall embrace all the land which will be benefited in

Assessment of non-abutting land unequally benefited.

the same proportion, and its proper portion of the cost shall be assigned to each district or section, and the portion of the cost to be borne by each district or section shall be specially assessed on the lots therein according to the extent of their frontage by an equal special rate per foot of such frontage. 1 Geo. V. c. 58, s. 29.

PROCEDURE FOR MAKING SPECIAL ASSESSMENT.

Where all of owners' portion assessed on abutting land.

30.—(1) Where the owners' portion of the cost is to be specially assessed upon the lots abutting directly on the work by an equal special rate per foot frontage, before passing the by-law for undertaking it, the council shall procure to be made:

(*a*) A report as to the lifetime of the work;

(*b*) A report as to the reductions, if any, which ought to be made under the provisions of section 24 in respect of any lot and the aggregate amount of such reductions;

(*c*) An estimate of the cost of the work;

(*d*) A statement of the share or proportion of the cost which should be borne by the land abutting directly on the work and by the corporation respectively;

(*e*) A report as to the number of instalments by which the special assessment should be made payable.

Where part of owners' portion assessed on non-abutting land.

(2) In the case of a work part of the owners' portion of the cost of which may be specially assessed on land not abutting directly on the work, before passing the by-law for undertaking the work, in addition to procuring the reports and estimate mentioned in subsection 1, the council shall procure to be made a further report stating:

(*a*) Whether it would be inequitable to charge the whole of the owners' portion of the cost on the land abutting directly on the work;

(*b*) If inequitable to do so, what portion of the cost should be borne by the corporation, what portion thereof should be specially assessed upon the land abutting directly on the work and what land not abutting directly on the work will be immediately benefited and should be specially assessed for any part of the cost and the portion of the cost which should be specially assessed upon it. 1 Geo. V. c. 58, s. 30.

The failure of the clerk of the municipality to report to the council, at its first meeting after the receipt of a petition for undertaking a work as a local improvement, with respect to the value of the properties, the lifetime of the work and the number of owners benefited as required by the by-laws of the council, is only an irregularity, and where what was required to be reported upon was not reported upon until after the work had been completed, the assessment is not thereby invalidated: Canada Company v. Mitchell (1904), 7 O.L.R. 482.

It will be observed that s. 30 requires that the report shall be procured before passing the by-law for undertaking the work.

Belanger v. Montreal (1898), Q.R. 15 S.C. 43, in which it was held that where a statute directs that a certain proportion of the cost of enlarging a street shall be paid by the owners of land abutting on it, it is not necessary for the commissioners to assess this cost equally on each side, but they must take into account the benefit accruing to the owners by the enlargement, and, if of the opinion that one side has benefited more than the other, they should increase the proportion to be assessed on that side accordingly.

Special assessment roll to be prepared.

31. Before a special assessment is imposed the council shall procure to be made a special assessment roll in which shall be entered

(*a*) Every lot to be specially assessed in respect of the owners' portion of the cost, the name of the owner and the number of feet of its frontage to be so assessed;

(*b*) Every lot which, but for the provisions of section 48, would be exempt from the special assessment and the number of feet of its frontage;

(*c*) The rate per foot with which each lot is to be so assessed;

(*d*) The number of instalments by which the special assessment is to be payable. 1 Geo. V. c. 58, s. 31.

How reports, statements, etc., to be made.

32. The council may provide for the making of the reports, statements, estimates and special assessment roll mentioned in sections 30 and 31 in such manner and by such officer of the corporation or person as the council may deem proper, and may do so by a general by-law applicable to all works or to any class or classes of them or by a by-law applicable to the particular work. 1 Geo. V. c. 58, s. 32.

Holding of Court of Revision.

33.—(1) Before a special assessment is imposed a sittings of the Court of Revision for the hearing of complaints against the proposed special assessment shall be held.

Time and place of.

(2) Ten days' notice of the time and place of the sittings shall be given by publication, and at least fifteen days before the day appointed for the sittings a notice, Form 3, shall be mailed to the owner of every lot which is to be specially assessed. 1 Geo. V. c. 58, s. 33.

Any owner of land specially assessed is entitled to appeal. There is no special provision as to this and none was necessary. The object of the sittings of the Court of Revision is to hear complaints against the proposed special assessment, and it follows that any person affected by it may appeal.

Special assessment roll to be kept open for ten days.

34. The special assessment roll shall be kept open for inspection at the office of the clerk for at least ten days next before the day appointed for the sittings of the Court of Revision. 1 Geo. V. c. 58, s. 34.

Statement of cost of work for Court of Revision.

35. A statement showing under appropriate heads the actual cost of the work, verified by the certificate of the Clerk, Assessment Commissioner or Treasurer of the municipality shall be delivered to the Chairman of the Court of Revision before the meeting of the Court. 1 Geo. V. c. 58, s. 35.

Powers of Court.

36.—(1) The Court of Revision shall have jurisdiction and power to review the proposed special assessment and to correct the same as to all or any of the following matters:

(*a*) Where the owners' portion of the cost is to be specially assessed against the land abutting directly on the work, as to the following matters:

i. The names of the owners of the lots;

ii. The frontage or other measurements of the lots;

iii. The amount of the reduction to be made under the provisions of section 24 in respect of any lot;

iv. As to the lots which, but for the provisions of section 48, would be exempt from special assessment;

v. As to the lifetime of the work; and

vi. As to the rate per foot with which any lot is to be specially assessed.

(*b*) Where part of the owners' portion of the cost is to be specially assessed on land not abutting directly on the work, in addition to the matters mentioned in clause (*a*), as to the lots other than those abutting directly on the work which are or will be immediately benefited by it, and as to the special assessment which such lots should respectively bear.

(*c*) In all cases as to the actual cost of the work.

No power to alter proportions of cost.

(2) The Court of Revision shall not have jurisdiction or authority to review or to alter the proportions of the cost of the work which the lands to be specially assessed and the corporation are respectively to bear according to the provisions of the by-law for undertaking the work. 1 Geo. V. c. 58, s. 36.

See notes to s. 39.

Adjourned sittings of Court in case omission to assess certain lots.

37.—(1) Where it appears to the Court of Revision that any lot which has not been specially assessed should be specially assessed, before finally determining the matter the Court shall adjourn its sittings to a future day and shall cause notice, Form 3, to be given to the owner of such lot of the time and place when the adjourned sittings will be held.

Time for mailing notice.

(2) The notice shall be mailed at least six days before the time fixed for the adjourned sittings.

Power to fix special assessment of lots.

(3) If the Court of Revision determines that any such lot ought to be specially assessed, the Court shall have jurisdiction and power to fix and determine the amount of the special assessment thereon. 1 Geo. V. c. 58, s. 37.

When special assessment roll to be final.

38. The clerk shall make such corrections in the special assessment roll as are necessary to give effect to the decisions of the

Court of Revision, and the roll when so corrected shall be certified by the clerk, and when so certified, except in so far as it may be further amended on appeal to the Judge, such assessment roll and the special assessment shall be valid and binding upon all persons concerned and upon the land specially assessed, notwithstanding any defect, error or omission therein or any defect or error in the by-law for undertaking the work or in any notice given or proceeding taken or the omission of any proceeding or thing which ought to have been taken or done before the passing of the by-law for undertaking the work or thereafter down to and including the completion of such revision. 1 Geo. V. c. 58, s. 38.

See notes to s. 13.

Where a local improvement by-law is passed making a general assessment for the cost of the work, the payment of which is spread over a number of years, an action by a ratepayer contesting the work or complaining of its non-completion must be brought within six months after the cause of action arose (*i.e.*, the imposition of the assessment): Arbuthnot v. Victoria (1913), 18 B.C.R. 35, 9 D.L.R. 564, 23 W.L.R. 563.

An action does not lie for a declaration that the assessment of land for a local improvement is invalid and void on account of an alleged insufficient description of the land in the assessment roll, and the plaintiff's remedy was to apply to the Court of Revision for an alteration of it: Hislop v. Stratford (1917), 11 O.W.N. 328, affirming (1916), 11 O.W.N. 191.

The Act applicable to this case did not contain any provision similar to s. 38.

Any defects in a by-law or assessments under The Municipalities Local Improvement Act (Stats. B.C. 1913, c. 49) are cured by ss. 38 and 44 (2), and cannot, therefore, be set up: Pelly v. Chilliwack (1916), 30 D.L.R. 651, 35 W.L.R. 208.

Appeal to County Judge.

39.—(1) The council or the owner of a lot specially assessed may appeal to the Judge of the County Court from any decision of the Court of Revision.

Application of Rev. Stat. c. 195.

(2) The provisions of *The Assessment Act* as to appeals to the Judge shall apply to an appeal under the provisions of subsection 1.

Powers of Judge.

(3) The Judge shall have the like jurisdiction and powers as are conferred on the Court of Revision by section 36, and the pro-

visions of section 37 shall apply where it appears to the Judge that any lot not specially assessed ought to be so assessed. 1 Geo. V. c. 58, s. 39.

Where under the former law the Court of Revision had held that a special assessment was invalid and refused either to confirm it or to make any assessment under it, it was held that the Judge could properly entertain an appeal from the Court of Revision at the instance of the corporation and the assistant assessment commissioner: In re Dundas Street Bridges and In re Hunter and Toronto (1904), 8 O.L.R. 52, 3 O.W.R. 170, 660.

The Court of Revision has now no power to deal with the question of the validity of the assessment. Its powers are defined by s. 36.

BORROWING POWERS.

Temporary loans.

40.—(1) The council may agree with any bank or person for temporary advances to meet the cost of the work pending the completion of it. 1 Geo. V. c. 58, s. 40 (1).

Issue of debentures.

(2) The council may, when the work undertaken is completed, borrow on the credit of the corporation at large such sums as may be necessary to [repay such advances and to] defray the cost of the work undertaken, including the corporation's portion of the cost, and may issue debentures for the sums so borrowed. 1 Geo. V. c. 58, s. 40 (2); 5 Geo. V. c. 35, s. 7.

The words in brackets were added by 5 Geo. V. c. 35, s. 7.

Application of Rev. Stat. c. 192.

(3) The provisions of *The Municipal Act* as to by-laws for creating debts shall apply to by-laws passed under the authority of subsection 2, except that it shall not be necessary

(*a*) That the by-law be submitted to or receive the assent of the electors;

(*b*) That any rate be imposed for the payment of the principal of so much of the money borrowed as represents the owners' portion of the cost or of the interest thereon, other than the special rate per foot frontage imposed to meet it;

Rev. Stat. c. 192.

(*c*) To comply with the provisions of subsections 5 and 7 of section 263 of *The Municipal Act*.

and except that the debentures save as provided by section 42, shall be payable within the lifetime of the work.

Special rates for owners' portion to form special fund.

(4) The special rates imposed for the owners' portion of the cost shall form a special fund for the payment of the debentures issued under the authority of subsection 2 and the interest thereon and shall not be applicable to or be applied for any other purpose.

General rate to meet deficiency in special rate.

(5) If in any year the amount realized from the special rate imposed to provide for the owners' portion of the cost and interest is insufficient to pay the amount falling due in such year in respect of so much of the debentures as represent the owners' portion of the cost the council shall provide for the deficiency in the estimates for the following year and levy and collect the same by a general rate, but this shall not relieve the land specially assessed from the special rate thereon.

Owners' portion not to be deemed part of debenture debt of corporation. Rev. Stat. c. 192.

(6) The amount borrowed under the provisions of subsection 2, in respect of the owners' portion of the cost, shall not be deemed to be part of the existing debenture debt of the corporation within the meaning of section 288 of *The Municipal Act*.

Corporation's portion may be included in yearly estimates.

(7) Instead of borrowing the amount of the corporation's portion of the cost of a work undertaken the council may include the same in the estimates of the year. 1 Geo. V. c. 58, s. 40 (3-7).

A corporation had power under The Consolidated Municipal Act, 1903, s. 420 (3), to invest its sinking funds in its own local improvement debentures: Hislop v. Stratford (1917), 11 O.W.N 328.

Consolidation of by-laws.

41.—(1) Where two or more works have been constructed and the by-laws provided for by subsection 2 of section 40 have been passed, instead of borrowing the separate sums thereby authorized to be borrowed and issuing debentures therefor, the council by by-law, hereinafter called the consolidating by-law, may provide for borrowing the aggregate of such separate sums and for issuing one series of debentures therefor.

Recitals.

(2) The consolidating by-law shall show by recitals or otherwise in respect of what separate by-laws it is passed.

Rates not to be imposed by consolidating by-law.

(3) It shall not be necessary that the consolidating by-law shall impose any rate to provide for the payment of the debentures issued under it or the interest thereon, but the rates imposed by

the separate by-laws shall be levied, collected and applied for that purpose. 1 Geo. V. c. 58, s. 41.

One by-law for several works.

41*a*. Instead of passing a by-law under section 40 in respect of each individual work, a municipal council may pass one by-law in respect of several local improvement works, giving in such by-law in respect of each such work substantially the same information as would be given in several by-laws respecting such works, and may provide in such by-law for borrowing the aggregate cost of such several works and for issuing one series of debentures therefor. 4 Geo. V. c. 21, s. 43.

Term of annual instalments of special assessment.

42.—(1) The council shall impose upon the land liable therefor the special assessment with which it is chargeable in respect of the owners' portion of the cost, and the same shall be payable in such annual instalments as the council shall prescribe, but not so as to extend beyond the lifetime of the work unless the work is of the class prescribed in clause (*j*) of section 3, in which case the annual instalments may extend over a period of not more than 40 years.

Interest.

(2) In fixing the amount of the annual instalments a sum sufficient to cover the interest shall be added.

Commutation of special rates.

(3) The council may also either by general by-law or by a by-law applicable to the particular work prescribe the terms and conditions upon which persons whose lots are specially assessed may commute for a payment in cash the special rates imposed thereon. 1 Geo. V. c. 58, s. 42.

Application of Rev. Stat. c. 195, ss. 94-97.

43. The provisions of sections 94 to 97 and the other provisions of *The Assessment Act* as to the collection and recovery of taxes, and the proceedings which may be taken in default of payment thereof, shall apply to the special assessments and the special rates imposed for the payment of them. 1 Geo. V. c. 58, s. 43.

Rates levied on land under The Municipalities Local Improvement Act (Stats. B.C. 1913, c. 49) are recoverable as a debt, and may be counterclaimed in an action on an award for land taken under the Act: Pelly v. Chilliwack (1916), 30 D.L.R. 651, 35 W.L.R. 208.

Where special assessments irregular new assessments may be made.

44.—(1) If a debt has been incurred by the corporation for or in respect of a work undertaken before the passing of this Act and after the incurring of the debt, the special assessment for the work is found or adjudged to be invalid or the by-law for borrowing money to defray the cost of the work is quashed or set aside either wholly or in part by reason of any irregularity or illegality in making such assessment or in passing such by-law, the council shall cause a new assessment to be made or may pass a new by-law when and so often as may be necessary to provide the money required to be raised to discharge the debt so incurred.

Where by-law quashed Court may direct passing of new by-.law.

(2) In the case of a work undertaken after the passing of this Act, if the special assessment in respect of it has become confirmed under the provisions of section 38, no by-law for borrowing money to defray the cost of the work or for imposing the special assessment shall be quashed, set aside or adjudged to be invalid by reason of its illegality or of any defect in it, but the Court in which any proceeding for quashing, setting aside or declaring to be invalid the by-law is taken shall on such terms and conditions as to costs and otherwise as may be deemed proper direct the council to amend or to repeal such by-law and, where a repealing by-law is directed to pass a new by-law in proper form in lieu of the repealed by-law, and it shall be the duty of the council to pass such by-law or by-laws accordingly.

Liabilities incurred to be binding.

(3) Every liability or obligation incurred and every debenture issued by the corporation under the authority of any such defective or illegal by-law shall be as effectual and as binding as if the amending or new by-law directed to be passed had been passed and was in force at the time such liability or obligation was incurred or such debenture was issued.

Where Court of its own motion directs passing of new by-law.

(4) Although no proceeding has been taken to quash, set aside or declare invalid the by-law the council may of its own motion and if required by any person to whom it has incurred any liability on the faith of the by-law shall pass such amending or new by-law as may be necessary to make effectual and binding the liability so incurred and any debenture issued under the authority of such

by-law, and the provisions of subsection 3 as to the effect of an amending or new by-law shall apply to any by-law so passed. 1 Geo. V. c. 58, s. 44.

REPAIR OF WORK.

Maintenance and repair of work by corporation.

45.—(1) After a work undertaken has been completed, it shall during its lifetime be kept in repair by and at the expense of the corporation.

General duty to repair not affected.

(2) Nothing in this Act shall relieve the corporation from any duty or obligation to keep in repair the highways under its jurisdiction to which it is subject either at common law or under the provisions of *The Municipal Act*, or otherwise, or impair or prejudicially affect the rights of any person who is damnified by reason of the failure of the corporation to discharge such duty or obligation. 1 Geo. V. c. 58, s. 45.

Rev. Stat. c. 192.

Compelling corporation to repair.

46.—(1) Where, at any time during the lifetime of a work undertaken, the corporation fails to keep and maintain it in a good and sufficient state of repair, and, after one month's notice in writing by the owner or occupant of any lot specially assessed requiring the corporation to do so does not put the work in repair, a Judge of the Supreme Court, or the Judge of the County Court of the county in which the municipality lies, upon the application of any owner or occupant of any land so specially assessed, may make an order requiring the corporation to put the work in repair.

Determination as to necessary repairs.

(2) The Judge may determine what repairs are necessary and by his order may direct them to be made in such manner within such time and under such supervision as he may deem proper.

Remuneration of person supervising.

(3) Where a person under whose supervision the repairs are to be made is appointed, the Judge may fix and determine the remuneration to be paid to such person and the same shall be paid by the corporation and payment thereof may be enforced in like manner and by the same process as a judgment for the payment of money.

Effect of order.

(4) The order shall have the same effect and may be enforced in like manner as a peremptory mandamus.

When repairs may be made by applicant and payment therefor.

(5) If the corporation does not comply with the order of the Judge, in addition to any other remedy to which the applicant for the order may be entitled, the Judge may authorize the repairs to be made by the applicant, and if made by him the cost thereof shall be ascertained and determined by the Judge, and when so ascertained and determined payment thereof may be enforced in like manner and by the same process as a judgment for the payment of money.

Appeal to Divisional Court.

(6) An appeal shall lie to a Divisional Court from any order made under the provisions of this section, and the procedure where the appeal is from an order of a Judge of the Supreme Court shall be the same as on an appeal from an order made in an action in the Supreme Court, and if the appeal is from an order of a Judge of a County Court the same as on an appeal from an appealable order made in an action in the County Court. 1 Geo. V. c. 58, s. 46.

In In re Medland and Toronto (1899), 31 O.R. 243, it was held that the duty to repair which rests upon the corporation ends when it becomes necessary to reconstruct the work or improvement, and that, whenever it is in such a condition that practical men would say of it that it is worn out and not worth repairing, an order for repair could not be made under the provisions of the section applicable in that case.

The opinion was also expressed that the result would be otherwise if the necessity for reconstruction had arisen because of the default of the corporation to keep the work in repair.

The legislation under consideration in that case was s. 666 of R.S.O. 1897, c. 228, and s. 41 of 62 Vict. (2nd session) c. 26.

The duty to repair imposed by s. 666 was not limited, as it is by this section, to the "lifetime of the work."

As to this see s. 30 (1), cl. (*a*), and s. 36 (1), cl. (*a*), par. 5.

See also King v. Matthews (1903), 5 O.L.R. 228, as to paying out of the general funds for the reconstruction of a work that should have been undertaken as a local improvement.

ASSESSMENT OF LAND EXEMPT FROM TAXATION.

Certain lands exempt from taxation liable to be specially assessed.

47. Land on which a church or place of worship is erected or which is used in connection therewith, and the land of a university, college or seminary of learning, whether vested in a trustee or otherwise, which is exempt from taxation under *The Assessment Act*, except schools maintained in whole or in part by a legislative grant or a school tax, shall be liable to be specially assessed. 1 Geo. V. c. 58, s. 47.

Rev. Stat. c. 195.

It was held in Upper Canada College v. Toronto (1916), 37 O.L.R. 665, 32 D.L.R. 246, that the provisions of this section are in conflict with the provision of s. 10 of The Upper Canada College Act, R.S.O. c. 280, which exempts the property of the college from taxation to the same extent as property vested in the Crown for the public uses of Ontario, and that the latter provision must govern according to the general rule that, in the absence of any indication of intention on the part of the legislature, special Acts are not repealed by public general Acts.

It was also held that the collection of money for local improvements pursuant to The Local Improvement Act is taxation, and that the exemption from taxation contained in The Upper Canada College Act extends to assessments for local improvements if lands of the Crown are exempt from them as they are by s. 5 (1) of The Assessment Act, R.S.O. c. 195, and that that exemption is not abrogated by The Local Improvement Act or otherwise.

It was also held that it was not necessary that petitions for the passing of local improvement by-laws should be signed by the college, that the college was not qualified and competent to sign them, and the action, which was by the college for a declaration that by-laws based on a petition not signed by the college affecting lands of which the college owned more than one-half in value, were invalid was dismissed.

Briefly stated, the effect of this decision is that, inasmuch as the exemption from taxation of the property of Upper Canada College does not depend upon The Assessment Act, but upon the college's special Act, s. 47 has not the effect of making it liable to assessment for local improvements.

48. Land exempt from taxation for local improvements under any general or special Act shall nevertheless, for all purposes except petitioning for or against undertaking a work, be subject to the provisions of this Act and shall be specially assessed; but the special assessments imposed thereon which fall due while such land remains exempt shall not be collected or collectable from the owner thereof but shall be paid by the corporation. 1 Geo. V. c. 58, s. 47.

Land exempt from taxation for local improvements to be specially assessed.

STREET CLEANING, ETC

49.—(1) The council may by by-law provide that thereafter the annual cost of cleaning, clearing of snow and ice, watering,

Cleaning, watering,

lighting streets, etc.

oiling, sweeping, lighting, light supplied in excess of that supplied at the expense of the corporation at large, cutting grass and weeds and trimming trees and shrubbery on any street, or any one or more of such services shall be specially assessed upon the land abutting directly on such street according to the frontage thereof, and the foregoing provisions of this Act shall not apply to such services. 1 Geo. V. c. 58, s. 49 (1); 2 Geo. V. c. 44, s. 6.

Application to defined areas.

(2) Instead of naming the particular street or streets the by-law may apply to all the streets in a defined section or sections of the municipality.

Special rate.

(3) Where the council so provides the amount of the special rate imposed to defray such cost may be entered on the collector's roll and collected in like manner as other taxes.

Duration of by-law.

(4) The by-law shall remain in force from year to year until repealed. 1 Geo. V. c. 58, s. 49 (2-4).

Power to construct works on boundary lines.

50.—(1) Where a highway forms the boundary between two or more municipalities although it lies wholly within one or partly within two or more of them, the corporations of the municipalities may agree

(*a*) To undertake in respect of such highway or any part of it any work or service which may be underaken as a local improvement under this Act.

(*b*) As to the council by which the work or service shall be undertaken;

(*c*) As to whether the corporations' portion of the cost shall be provided for by borrowing or shall be included in the estimates of the year; and

(*d*) As to the proportions in which the corporations' portion of the cost shall be borne by such corporations respectively.

Powers and duties of initiating council.

(2) The council of the municipality which according to the agreement is to undertake the work or service, hereinafter called the initiating council, shall have all the powers and perform all the duties in respect of it which may be exercised or are to be

performed by the council of a municipality which undertakes a work or service as a local improvement under this Act, and the highway shall, for the purposes of the work or service, be deemed to lie wholly within and to be under the exclusive jurisdiction of the initiating council.

Certified copies of by-law to be sent to clerks of other municipalities.

(3) The clerk of the initiating council shall forthwith, after the passing of its by-law imposing the special rates to defray the owners' portion of the cost, deliver or transmit by registered post to the clerk of any municipality in which is situate any land upon which a special rate has been imposed a copy of the by-law certified under his hand and the seal of the corporation to be a true copy.

Collection of rates in other municipalities.

(4) The rates required by the by-law to be levied and collected in any year upon land in any municipality other than that by the council of which the by-law is passed shall be collected by the council of such municipality in like manner as if such rates had been imposed by that council.

Payment over to initiating council.

(5) The corporation of each of the municipalities other than that by the council of which the work or service is undertaken shall pay to the last mentioned corporation the sums which are to be levied and collected in that year under the next preceding subsection, and such payment shall be made on demand therefor at any time after the 14th day of December in that year, and shall be made whether or not such rates have been collected from the persons liable to pay them.

Payment not to relieve land assessed.

(6) Such payment shall not relieve any land specially assessed from the special rate thereon, but it shall remain liable for the special rate until it is paid.

Payment over where corporations' part included in estimates.

(7) Where the agreement provides that the corporations' portion of the cost shall be included in the estimates of the year, the corporation of each of the municipalities, other than that by the council of which the work or service is undertaken, shall pay to that corporation when the amount of the corporations' portion of the cost is finally determined its share or portion of such cost, and the amount so paid shall be provided for in the estimates

for the then current year of the council of the corporation which is to pay it.

Where corporations' portion met by issue of debentures.

(8) Where the agreement provides that the amount required to defray the corporations' portion of the cost is to be borrowed, the corporation of each of the municipalities, except that by the council of which the work or service is undertaken, shall in each year during the currency of the debentures issued for the money borrowed pay to that corporation the same proportion of the principal and the interest payable in that year as under the agreement it is to bear of the corporations' portion of the cost, and the amount which the by-law for borrowing the money requires to be raised in that year shall be reduced by the sum so paid.

Maintenance and repair.

(9) The corporations shall bear the cost of keeping the work in repair in the proportions in which the cost of the work is to be borne by them. 3-4 Geo. V. c. 44, s. 4.

Construction of bridge over ravine separating municipalities.

50*a*.—(1) Where a ravine separates the lands of adjoining municipalities and it is deemed desirable to construct a bridge connecting the lands of such municipalities, the council of either municipality may pass a by-law for undertaking the work of constructing the bridge or of constructing the bridge combined with any other work which may be undertaken as a local improvement and the provisions of this Act shall apply except that, subject to the provisions of subsections 2 and 3, no part of the cost of the work shall be assessed upon lands in the other municipality.

Agreement with other municipality as to proportion of cost to be borne by it.

(2) Where lands which will be benefited by the work lie within the limits of any municipality other than the initiating municipality, the council of the initiating municipality may agree with the council of such other municipality as to the proportion of the cost of the work to be borne by the corporation of that municipality and the lands within it, and such last mentioned council may pass a by-law for the issue of debentures for the amount of such proportion, payable within such period not exceeding twenty years, as the council may determine, and it shall not be necessary that the by-law be submitted to the vote of the electors.

Powers of other municipality to specially assess lands.

(3) The council of such other municipality may proceed under this Act for the purpose of assessing the lands within it which will be benefited by the work their proper proportion of the amount which it shall have agreed to contribute to the cost of the work in the same way as if the work had been undertaken by such council and the amount to be so contributed were the cost of the work, and the proceedings shall be in accordance with the provisions of this Act. 5 Geo. V. c. 35, s. 8.

SPECIAL PROVISIONS AS TO TOWNSHIPS, VILLAGES, ETC.

Waterworks and fire engines.

51.—(1) The council of a township or village may undertake as a local improvement

(*a*) The construction of waterworks;

(*b*) The purchase of fire engines and other appliances for the purpose of fire protection;

(*c*) The laying of mains and other appliances to connect with any existing system of waterworks whether owned by the corporation or by any other person. 1 Geo. V. c. 58, s. 50 (1); 3-4 Geo. V. c. 44, s. 5.

Assessment of owners' part in land in defined areas.

(2) The council, by the by-law for undertaking the work, may provide that the whole cost shall be specially assessed against the land in any defined section or sections of the municipality, and that the annual cost of managing and maintaining the work shall be assessed against and levied upon such land, and in the event of such by-law being passed the amount of reductions provided for by subsection 4 of section 24, and the amount of the exemptions provided for by section 48, shall be assessed against the land in such section or sections liable to be specially assessed, and shall not be paid by the corporation. 5 Geo. V. c. 35, s. 9.

Trustees for managing fire engines and appliances.

(3) In the case of the purchase of fire engines and other appliances for the purpose of fire protection the council may, by by-law, provide for

(*a*) The election of a board of three trustees, and the time and manner of holding the election;

(*b*) The term of office of such trustees;

(*c*) Filling vacancies in such board;

(*d*) The election of an auditor;

(*e*) The appointment of a second auditor by such board; and

(*f*) The duties of such auditors.

1 Geo. V. c. 58, s. 50 (3); 3-4 Geo. V. c. 44. s. 5.

Care and control of fire engines, etc.

(4) The board of trustees shall have the care, control and management of such fire engines and appliances.

Qualification of voters for election of trustees.

(5) No person shall be entitled to vote at the election of such trustees unless he is the owner of land to be specially assessed under the provisions of subsection 2 and is also qualified to vote at municipal elections. 1 Geo. V. c. 58, s. 50 (4-5).

ADOPTION OF LOCAL IMPROVEMENT SYSTEM.

Adoption of local improvement system.

Rev. Sta. c. 192.

52.—(1) The council of a corporation by by-law passed with the assent of the municipal electors, in accordance with the provisions of *The Municipal Act*, may provide that all works which may be undertaken as local improvements, or any one or more classes or descriptions of such works thereafter, or after a day named in the by-law, shall be undertaken as local improvements and not otherwise.

Repeal of by-law.

(2) The by-law may be repealed but only by a by-law passed with the like assent. 1 Geo. V. c. 58, s. 51.

MISCELLANEOUS.

Special rates and covenant against incumbrances.

53. The special assessment and the special rates charged or chargeable upon land for or in respect of the cost of any work undertaken, whether upon petition or otherwise, except so much of them as is in arrear and unpaid, shall not, as between a vendor and a purchaser, or as respects a covenant against incumbrances, or for the right to convey, or for quiet possession free from incumbrances, be deemed to be an incumbrance upon the land upon which the special rate is charged or chargeable. 1 Geo. V. c. 58, s. 52.

In In re Taylor and Martyn (1907), 14 O.L.R. 132, it was held that s. 681 of 3 Edw. VII. c. 19 did not relieve a vendor before conveyance of liability to remove a charge for local improvement rates where he was bound to convey free from encumbrances, notwithstanding the purchaser's agreement to assume "all taxes and assessments" wherewith the lands may be rated or charged "from and after the date fixed for completion of the sale."

A material change in the law was made by s. 52 of 1 Geo. V. c. 58, which is the same as this section, and a case arising under it would be decided differently, it now being clearly provided that, as between vendor and purchaser, the special assessment and the special rates, except such of them as may be in arrear, are not to be deemed to be encumbrances upon the land upon which the special rate is charged or chargeable.

When work may be completed.

54. Proceedings for undertaking a work begun by one council may be continued, and the work may be begun, continued and completed by a succeeding council. 1 Geo. V. c. 58, s. 53.

Municipal Board may prescribe forms.

55. The Ontario Railway and Municipal Board may approve of forms of by-laws, notices and other proceedings to be passed, given or taken under or in carrying out the provisions of this Act, and every by-law, notice or other proceeding which is in substantial conformity with the form so approved shall not be open to objection on the ground that it is not in the form required by the provisions of this Act applicable thereto; but the use of such forms shall not be obligatory. 1 Geo. V. c. 58, s. 54.

FORM 1.

Section 11.

Take notice that

1. The Council of the Corporation of the of intends to construct as a local improvement (*describe the work*) on (*or* in) street, between (*describe the points between which the work is to be constructed*) and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed add*) and upon the following land which is immediately benefited by the work (*describe the land*).

2. The estimated cost of the work is $, of which $ is to be paid by the Corporation. The estimated special rate per foot frontage is . The special assessment is to be paid in annual instalments.

3. A petition against the work will not avail to prevent its construction.

Dated Clerk.

Note.—Where that part of the municipality in which the land to be specially assessed is situate is divided into districts or sections the form will be altered to show the special rate per foot frontage in each district or section.

FORM 2.

Section 13.

Take notice that

1. The Council of the Municipal Corporation of the of intends to construct (*describe the work*) on (*or* in) street between (*describe the points between which the work is to be constructed*) as a local improvement and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed add*)

and upon the following land which is immediately benefited by the work (*describe the land*).

2. The estimated cost of the work is $, of which $ is to be paid by the Corporation, and the estimated special rate per foot frontage is . The special assessment is to be paid in annual instalments.

3. Persons desiring to petition against undertaking the work must do so on or before the day of 19 .

Dated

Clerk.

Note.—Where that part of the municipality in which the and to be specially assessed is situate is divided into districts or sections the form will be altered to show the special rate per foot frontage in each district or section.

FORM 3.

Sections 33 (2) and 37.

Take notice that

1. The Council of the Corporation of the of has constructed as a local improvement (*describe the work*) on (*or* in) street between (*describe the points between which the work has been constructed*).

2. The cost of the work is $ of which $ is to be paid by the Corporation. The special rate per foot frontage is . The special assessment is to be paid in annual instalments.

3. The estimated lifetime of the work is years.

4. A Court of Revision will be held on the day of 19 , at o'clock at the (*insert place of meeting*) for the purpose of hearing complaints against the proposed assessments or the accuracy of frontage measurements and any other complaint which persons interested may desire to make and which is by law cognizable by the Court.

or (*where the Court of Revision proceeds under section 37*).

4. You are served with this notice because the Court of Revision is of opinion that your lot though not specially assessed should be specially assessed in respect of the owner's portion of the cost of the work and an adjourned sittings of the Court will be held on the day of 19 , at o'clock at the (*insert place of meeting*) when the matter will be determined by the Court.

Dated Clerk.

Note.—Where that part of the municipality in which the land to be specially assessed is situate is divided into districts or sections the form will be altered to show the special rate per foot frontage in each district or section.

The following Forms have been approved of by The Ontario Railway and Municipal Board, under the authority of section 54 of the Act.

FORM 4.

PETITION FOR LOCAL IMPROVEMENT.

TO THE COUNCIL OF THE CORPORATION OF THE..........
of.....................

THE PETITION OF THE UNDERSIGNED, owners of lands abutting directly on the work hereinafter referred to.

SHEWETH AS FOLLOWS:—

Sidewalk. 1. That it is expedient to construct a..................... sidewalk...........feet wide or such other width as the Council may deem best upon the...................side of.......... ....Street from...................... to..

or

Curbing. 1. That it is expedient to construct a curbing upon the ....side of..........................Street from..............................to.................. ....

or

1. That it is expedient to construct a sewer on.............. Sewer.
......................Street from..........................
..............to...

(*Where the circumstances require, the following may be added*): That such sewer, if deemed advisable, may be constructed of a larger capacity than is required for the purpose of the abutting land in order to afford an outlet for the sewage of lands not abutting directly on the work, subject to the provisions of the Act as to assessing the non-abutting lands for a fair and just proportion of the cost of the work.

or

1. That it is expedient to pave......................Street Paving.
with..........................from....................
..............to...

or

1.—(1) That it is expedient to alter the grade of............ Street, changing grade of.
................Street from................................
................to..

by (*describe character of work as cutting and filling, or as the case may be*) so that the same may be reduced to a grade not exceeding...

(*Where the circumstances require, the following may be added*):—

(2) That your petitioners submit, subject to the opinion of the Council, that such change in the grade will benefit the Municipality at large, and will specially benefit lands in the vicinity of the work other than those abutting directly thereon, and it would therefore be inequitable to charge all the cost thereof on the lands abutting directly upon the work.

(NOTE.—*These clauses relating to the changing of the grade of a street, with such changes as may be necessary, will apply to the opening, widening, extending, grading, diverting or improving of a street or the construction of a bridge.*)

2. That such work be constructed as a local improvement under the provisions of *The Local Improvement Act.*

YOUR PETITIONERS THEREFORE PRAY:—

That the said (*insert here description of work as* sidewalk, or curbing, etc.)...................may be constructed as a local improvement as aforesaid.

Dated this............day of........................19.....

Signature of Petitioner.	Street, Number of Lot, or other Description of Land Owned by Petitioner.	Post Office Address of Petitioner.

FORM 5.

CLERK'S CERTIFICATE.

TO THE COUNCIL OF THE CORPORATION OF THE.........
of.......................

I, ...Clerk of the.......................of............................ do hereby certify:—

That the annexed (*or* within) Petition of................ and others praying for the construction of.................... ....upon (*or* in)........................... Street from................................to......... ....as a local improvement lodged with me on the......................day of.................... 19.... is sufficient.

Dated this...............day of...................... 19.....

......................Clerk.

FORM 6.

DECLARATION OF PUBLICATION.

I, ... of the ....
of ...., in the County of
........................., DO SOLEMNLY DECLARE:

1. A true copy of the notice hereto annexed was published in the.................. newspaper published at ....
on the........ day of.......... 19.... (*If published more than once insert* "and on the.......... days of............ 19....")

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the............
of..................................
this..................... day o ....
.... 19....

A Commissioner, &c.

FORM 7.

DECLARATION OF SERVICE.

I, ... of the ....
of......................, in the County of...................
.... DO SOLEMNLY DECLARE:

1. I served a true copy of the notice hereto annexed on the owners whose names appear in Column 1 of Schedule 1 on the dates mentioned in Column 2 and in the manner mentioned in Column 3.

2. The owners whose names appear in Schedule 2 were not served for the reasons set opposite their respective names.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the............
of....................................
this......................day of......
............................19....

A Commissioner, &c.

SCHEDULE 1.

Column 1.	Column 2.	Column 3.
Name of Owner.	Date of Service.	How Served.

SCHEDULE 2.

Column 1.	Column 2.
Name of Owner.	Reasons for Not Serving.

FORM 8.

PROCEDURE BY-LAW NO.....

BY-LAW to provide for proceedings to be taken for the construction of a work undertaken as a Local Improvement.

WHEREAS it is expedient to provide for the making of the reports, statements, estimates and special assessment roll required in the case of a work undertaken as a Local Improvement under *The Local Improvement Act.*

THEREFORE the Municipal Council of the Corporation of the ....of........................enacts as follows:—

1. In this by-law "the Act" shall mean *The Local Improvement Act.*

2. The interpretation section of the Act shall apply to this by-law.

3. A duly qualified engineer, or some officer of this Corporation or some other person, competent to perform the duties of an engineer under the Act, hereinafter called the "Engineer," shall be appointed to perform all services which under the Act may be performed by an engineer, and he shall make all reports, statements and estimates and the special assessment roll required in the case of a work undertaken.

4. The Clerk shall give to the Engineer such information and assistance as may reasonably be required of him.

5. Upon the Council acquiring power to undertake a work, the Engineer shall forthwith make the report, statements and estimates respecting such work required by the Act and deliver the same to the Clerk, who shall submit them to the Council at the next meeting thereof.

6. Upon the completion of the work the Engineer shall make a special assessment roll for the cost of the work, and deliver the same to the Clerk. He shall also make a statement showing under appropriate heads the actual cost of the work. The Clerk, Treasurer and Assessment Commissioner shall assist the Engineer in making such statement and when it is completed the Treasurer, or in his absence the Clerk, shall verify the same by his certificate, and the statement shall be delivered to the Chairman of the Court of Revision.

7. Upon receiving the Special Assessment Roll, the Clerk shall notify the Chairman of the Court of Revision, who shall, without delay, call sittings of the Court for the hearing of complaints

against the proposed special assessment and shall notify the Clerk of the time and place at which such sittings will be held.

8. The Clerk shall prepare and serve or cause to be served and published all notices required by the Act to be served or published, and shall prepare the affidavits and other evidence of the service and publication thereof, and keep the same on file in his office, and he shall also prepare all such other certificates, papers and documents as may be required and shall see that all the requirements of the Act respecting the proceedings for or in connection with the construction of the work are complied with.

Passed this..............day of................19....

Mayor (*or* Reeve).

Clerk.

Seal of Corporation

FORM 9.

By-law No.....

By-law to provide for the payment by the Corporation of part of the cost of certain works constructed as local improvements otherwise chargeable upon the lands abutting directly upon the works.

Whereas it is expedient that part of the cost of every work of any of the classes or descriptions hereinafter mentioned, constructed as a local improvement which otherwise would be chargeable upon lands abutting directly on the work shall be paid by the Corporation;

And Whereas there is not in force in this municipality any by-law passed with the assent of the Municipal electors providing that all works of any of the classes or descriptions hereinafter mentioned shall be undertaken as local improvements and not otherwise;

Therefore the Municipal Council of the Corporation of the ....of.....................enacts as follows:—

1. The interpretation section of *The Local Improvement Act* shall apply to this by-law.

2. The Corporation shall pay.......... per cent. of that part of the cost of every granolithic, stone, cement, asphalt or brick sidewalk; [*if pavements and curbings are to be provided for add* "and of every pavement and curbing constructed as a local improvement which otherwise would be chargeable upon the lands abutting directly on the work."]

3. This by-law shall apply to such works only as are undertaken after the passing hereof.

Passed by a vote of three-fourths of all the members of the Council this..........day of....................19....

Mayor (*or* Reeve).

Seal of
Corporation

Clerk.

FORM 10.

CONSTRUCTION BY-LAW NO.....

BY-LAW to authorize the construction of....................
....................on........................Street from
........................to................................
as a Local Improvement under the provisions of *The Local Improvement Act*.

WHEREAS........................and others have petitioned the Council to construct, as a local improvement, the work hereinafter described, and the Clerk has certified that the petition is sufficient and it is expedient to grant the prayer of the petition in manner hereinafter provided.

If on Petition insert this recital.

Or

WHEREAS notice of the intention of the Council to undertake the construction as a local improvement of the work hereinafter described, has been duly given by publication of the notice and

If on the Initiative insert this recital.

by service of it upon the owners of the lots liable to be specially assessed, and the publication and service of such notice has been proved by a statutory declaration filed with the Clerk, and no petition against the work signed by a majority of the owners, representing at least one-half the value of the lots which are liable to be specially assesed, has been presented.

Or

If on two-thirds vote of council insert this recital.

Whereas it is expedient that the construction of the work hereinafter described shall be undertaken as a local improvement and notice of the intention of the Council to undertake such work has been duly published.

Or

Where private drain connections are to be constructed as a separate work, insert this recital.

Whereas a sewer has been constructed upon...Street from.................................. to..and it is expedient to construct as a local improvement private drain connections from the sewer to the street line on the.......................side of the street (*if connections are to be constructed on both sides insert* "on both sides of the street") connecting the sewer with the lots abutting thereon specified in Schedule 1, and notice of the intention of the Council to undertake the construction of such private drain connections has been duly given.

Or

If work is to be constructed on sanitary grounds, insert this recital.

Whereas the Provincial Board of Health (*or*) the Local Board of Health of this Municipality (*as the case may be*) has recommended the construction (*or* the enlargement *or* the extension) of a (the) sewer on ....Street from.......... ....to........................ and it is therefore necessary and desirable in the public interest on sanitary grounds to construct (*or* enlarge *or* extend) such sewer according to such recommendation as a local improvement.

Therefore the Municipal Council of the Corporation of the ....of....................enacts as follows:—

General.

1. That a..............................be constructed on................Street from...............to.............

as a local improvement under the provisions of *The Local Improvement Act.*

Or

1. That a........................pavement............. feet wide, be constructed on.................................. Street, from... to..................................as a local improvement under the provisions of *The Local Improvement Act.*

Pavement.

See 1 Geo. V. c. 58, s. 4.

Note.—If the Council determines to construct as part of the work a water main, a gas main, water or gas service pipes and stop cocks or alterations in them, private drain connections, or any or either of such works, set out the additional work to be undertaken, and set out in a schedule the lots to be specially assessed for such additional work.

Or

1. That private drain connections be constructed as a local improvement, under the provisions of *The Local Improvement Act* applicable to such a work, from the sewer on............... ....Street from.....................to.............. to the Street line on both sides (*or if on one side only insert* "on the ....side") of the Street, connecting the sewer with the lots abutting on that part of the Street specified in Schedule 1.

Private drain connections as a separate work.

Or

1. That a sewer (*describe kind of sewer and its dimensions*) be constructed as a local improvement, under the provisions of *The Local Improvement Act,* on............Street from............ to......................(*if the Council so determines add*) with private drain connections to the line of the street connecting such sewer with the lots specified in Schedule 1.

Sewer.

Or

1.—(1) That it is determined and declared, this by-law being passed by a vote of two-thirds of all the members of the Council, that it is desirable that the construction of a.................. on..........................Street from................

Where vote of two-thirds of all the members of the council required.

to........................should be undertaken as a local improvement under the provisions of *The Local Improvement Act.*

(2) That as above determined and declared a..be constructed on....................Street from..to..as a local improvement under the provisions of *The Local Improvement Act.*

General. 2. The Engineer of the Corporation (*or*.................. *insert name of person appointed as Engineer of the work*) do forthwith make such plans, profiles and specifications and furnish such information as may be necessary for the making of a contract for the execution of the work.

3. The work shall be carried on and executed under the superintendence and according to the directions and orders of such Engineer.

4. The Mayor (*or* Reeve) and Clerk are authorized to cause a contract for the construction of the work to be made and entered into with some person or persons, firm or corporation, subject to the approval of this Council to be declared by resolution.

5. The Treasurer may (subject to the approval of the Council) agree with any bank or person for temporary advances of money to meet the cost of the work pending the completion of it.

6. The special assessment shall be paid by...................................annual instalments (*this period must be within the lifetime of the work*).

7. The debentures to be issued for the loan to be effected to pay for the cost of the work when completed shall bear interest at..............per cent. per annum and be made payable within................................years on the instalment plan (*or if on the sinking fund plan insert* "on the sinking fund plan"), and in settling the sum to be raised annually to pay the debt the rate of interest on investments shall not be estimated at more than four per cent. per annum.

8. Any person whose lot is specially assessed may commute for a payment in cash the special rates imposed thereon, by paying

the portion of the cost of construction assessed upon such lot, without the interest, forthwith after the Special Assessment Roll has been certified by the Clerk, and at any time thereafter by the payment of such sum as when invested at four per cent. per annum will provide an annuity sufficient to pay the special rates for the unexpired portion of the term as they fall due.

Passed this..
day of.............................., 19....

Mayor (*or* Reeve)

Clerk.

Seal of
Corporation

FORM 11.

Special Assessment Roll.

For the Cost of a............on the.........side of..........
(description of work)
Street, from......................to.......................
constructed as a Local Improvement.

<table>
<tr><th>Name of Owner.</th><th>Street.</th><th>Side of street.</th><th>Lot assessed.</th><th>Number of feet to be assessed.</th><th>Cost per foot frontage of work.</th><th>Cost per foot frontage of private drain connections.</th><th>Cost per foot frontage of water mains.</th><th>Cost per foot frontage of water service pipes and stopcocks, or alterations.</th><th>Cost per foot frontage of gas mains.</th><th>Cost per foot frontage of gas service pipes and stopcocks, or alterations.</th><th>Total cost per foot frontage with which each lot is assessed.</th><th>Number of instalments by which assessment is payable.</th></tr>
<tr><td colspan="13">Lots abutting on works.</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="13">Exempt Lots, the Assessment upon which is payable by Corporation.</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
</table>

Lots not abutting upon the work.

I ....Clerk of the.............. of.......................do hereby certify that the foregoing Special Assessment Roll is correct.

Dated..........day of..............19....

Clerk.

NOTE.—*For convenience the following may be added after the signature of the clerk.*

WORK UNDERTAKEN:—

CONSTRUCTION of a (*describe work*) on the..................
............side of........................Street from
..........................to.........................

Total cost of work.......................$

The Corporation's portion of the cost is.....$

The owners' portion of the cost of the work is.$

The part of the owners' portion of the cost specially assessed upon the lots abutting directly on the work is.................$

The part of the owners' portion of the cost specially assessed upon land not abutting directly on the work is.................$

The special assessment is to be paid in..........instalments.

The debentures are to bear interest at..................per cent. per annum.

FORM 12.

DEBENTURE BY-LAW, SINKING FUND PLAN.

BY-LAW NO. ......

By-law to provide for borrowing $........................ upon debentures to pay for the construction of a..............

on..........................Street from....................
..............................to.........................

Whereas pursuant to Construction By-law No............ passed on the..................day of...................... 19...., a...........................has been constructed on ....Street from...................... ....to...................... as a local improvement under the provisions of *The Local Improvement Act.*

And Whereas the total cost of the work is $............. of which $......................is the Corporation's portion of the cost, and $....................is the owners' portion of the cost, for which a Special Assessment Roll has been duly made and certified.

And Whereas the estimated lifetime of the work is........ ....years.

And Whereas it is necessary to borrow the said sum of $.............on the credit of the Corporation and to issue debentures therefor payable within..............years from the time of the issue thereof, and bearing interest at the rate of...... ....per cent. per annum, which is the amount of the debt intended to be created by this by-law.

And Whereas it will be necessary to raise annually $...... ....for the payment of the debt, and $................. for the payment of interest thereon, making in all $........... to be raised annually for the payment of the debt and interest, of which $................is required to pay the Corporation's portion of the cost and the interest thereon, and $............... is required to pay the owners' portion of the costand the interest thereon.

And Whereas the amount of the whole rateable property of the municipality according to the last revised assessment roll is $......................

And Whereas the amount of the existing debenture debt of the Corporation (exclusive of local improvement debts, secured by special rates or assessments) is $........................and no part of the principal or interest is in arrear.

THEREFORE the Municipal Council of the Corporation of the ....of....................enacts as follows:—

1. That for the purpose aforesaid there shall be borrowed on the credit of the Corporation at large the sum of..........dollars ($.............) and debentures shall be issued therefor in sums of not less than $100 each, which shall have coupons attached thereto for the payment of the interest.

2. The debentures shall all bear the same date and shall be issued within two years after the day on which this By-law is passed and may bear any date within such two years and shall be payable within..........................years after the time when the same are issued.

3. The debentures shall bear interest at the rate of.......... ....per cent. per annum payable.................. yearly, and as to both principal and interest may be expressed in Canadian Currency or Sterling money of Great Britain at the rate of one pound sterling for each four dollars and eighty-six and two-third cents, and may be payable at any place or places in Canada or Great Britain.

4. The Mayor (*or* Reeve) of the Corporation shall sign and issue the debentures and interest coupons, and the same shall also be signed by the Treasurer of the Corporation, and the debentures shall be sealed with the seal of the Corporation.

☞*In the case of a city it is unnecessary that the coupons be signed by the Mayor.*

5. During.....................years, the currency of the debentures, $.............shall be raised annually to form a sinking fund for the payment of the debt, and $............. shall be raised annually for the payment of the interest thereon, making in all $.............to be raised annually for the payment of the debt and interest, as follows:—

The sum of $.............shall be raised annually for the payment of the Corporation's portion of the cost and the interest thereon, and shall be levied and raised annually by a special rate sufficient therefor over and above all other rates on all the rateable property in the municipality at the same time and in the same manner as other rates.

☞ *If the rate per foot frontage is the same on all the lots, insert the following clause:—*

For the payment of the owners' portion of the cost and the interest thereon, the special assessment set forth in the said special assessment roll is hereby imposed upon the lands liable therefor as therein set forth; which said special assessment with a sum sufficient to cover interest thereon at the rate aforesaid shall be payable in.........equal annual instalments of $........... each, and for that purpose an equal annual special rate of ....cents per foot frontage is hereby imposed upon each lot entered in the said special assessment roll, according to the assessed frontage thereof, over and above all other rates and taxes, which said special rate shall be collected annually by the collector of taxes for the Corporation at the same time and in the same manner as other rates.

☞ *If the rate per foot frontage is not the same on all the lots, insert the following clause instead of the next preceding one:—*

For the payment of the owners' portion of the cost and the interest thereon; the special assessment set forth in the said special assessment roll is hereby imposed upon the lands liable therefor as therein set forth; which said special assessment with a sum sufficient to cover interest thereon at the rate aforesaid shall be payable in.........equal annual instalments of $........... each, and for that purpose the special annual rates per foot frontage set forth in Schedule 1 hereto attached are hereby imposed upon the lots entered in the said special assessment roll, according to the assessed frontage thereof, over and above all other rates and taxes, and the said special rates shall be collected annually by the collector of taxes for the Corporation at the same time and in the same manner as other rates.

6. All money arising from the said special rates or from the commutation thereof not immediately required for the payment of interest shall be invested as required by law.

7. The debentures may contain any clause providing for the registration thereof authorized by any statute relating to municipal debentures in force at the time of the issue thereof.

8. The amount of the loan authorized by this by-law may be consolidated with the amount of any loans authorized by other local improvement by-laws, by including the same with such other loans in a consolidating by-law authorizing the borrowing of the aggregate thereof as one loan and the issue of debentures for such loan in one consecutive issue pursuant to the provisions of the statute in that behalf.

9. This by-law shall take effect on the day of the final passing thereof.

Passed this..........day of................, 19....

Mayor (*or* Reeve).

Seal of
Corporation

Clerk.

FORM 13.

Debenture By-law. Instalment Plan.

By-law No. ......

By-law to provide for borrowing $....................upon debentures to pay for the construction of a................on the ....side of...................Street........... from....................to....................

Whereas, pursuant to Construction By-law No............. passed on the..............day of.....................19...., a................has been constructed on..............Street, from.................to..................as a local improvement under the provisions of *The Local Improvement Act;*

And Whereas the total cost of the work is $............... of which $..................is the Corporation's portion of the cost, and $..................is the owners' portion of the cost, for which a special assessment roll has been duly made and certified;

And Whereas the estimated lifetime of the work is ....years;

And Whereas it is necessary to borrow the said sum of $................on the credit of the Corporation and to issue debentures therefor bearing interest at the rate of............. per cent. per annum, which is the amount of the debt intended to be created by this by-law;

And Whereas it is expedient to make the principal of the said debt repayable in yearly sums during the period of........... years, of such amounts respectively that the aggregate amount payable for principal and interest in any year shall be equal as nearly as may be to the amount so payable for principal and interest in each of the other years;

And Whereas it will be necessary to raise annually the sum of $...........during the period of................years to pay the said yearly sums of principal and interest as they become due, of which $................is required to pay the Corporation's portion of the cost and the interest thereon, and $.............. is required to pay the owners' portion of the cost and the interest thereon;

And Whereas the amount of the whole rateable property of the Municipality, according to the last revised assessment roll, is $..................;

And Whereas the amount of the existing debenture debt of the Corporation (exclusive of local improvement debts, secured by special rates or assessments) is $................and no part of the principal or interest is in arrear;

Therefore the Municipal Council of the Corporation of the ....of....................enacts as follows:—

1. That for the purpose aforesaid there shall be borrowed on

the credit of the Corporation at large the sum of.......... dollars ($................), and debentures shall be issued therefor in sums of not less than $100 each, bearing interest at the rate of................ per cent. per annum, and having coupons attached thereto for the payment of the interest.

2. The debentures shall all bear the same date and shall be issued within two years after the day on which this By-law is passed, and may bear any date within such two years, and shall be payable in................ annual instalments during the .... years next after the time when the same are issued, and the respective amounts of principal and interest payable in each of such years shall be as follows:—

No.	Principal.	Interest.	Total.
	$	$	$
1			
2			
3			

3. The debentures as to both principal and interest may be expressed in Canadian currency or in Sterling money of Great Britain, at the rate of one pound sterling for each four dollars and eighty-six and two-thirds cents, and may be payable at any place or places in Canada or Great Britain.

4. The Mayor (*or* Reeve) of the Corporation shall sign and issue the debentures and interest coupons, and the same shall also be signed by the Treasurer of the Corporation, and the debentures shall be sealed with the seal of the Corporation.

☞ *In the case of a city it is unnecessary that the coupons be signed by the Mayor.*

5. During................ years, the currency of the debentures, the sum of $............. shall be raised annually for the payment of the debt and interest, as follows:—

The sum of $................shall be raised annually for the payment of the Corporation's portion of the cost and the interest thereon, and shall be levied and raised annually by a special rate sufficient therefor, over and above all other rates, on all the rateable property in the municipality, at the same time and in the same manner as other rates.

☞ *If the rate per foot frontage is the same on all the lots, insert the following clause:—*

For the payment of the owners' portion of the cost and the interest thereon, the special assessment set forth in the said special assessment roll is hereby imposed upon the lands liable therefor as therein set forth; which said special assessment, with a sum sufficient to cover interest thereon at the rate aforesaid shall be payable in..................equal annual instalments of $................each, and for that purpose an equal annual special rate of................cents per foot frontage is hereby imposed upon each lot entered in the said special assessment roll, according to the assessed frontage thereof, over and above all other rates and taxes, which said special rate shall be collected annually by the collector of taxes for the Corporation, at the same time and in the same manner as other rates.

☞ *If the rate per foot frontage is not the same on all the lots, insert the following clause instead of the next preceding one:—*

For the payment of the owners' portion of the cost and the interest thereon, the special assessment set forth in the said special assessment roll is hereby imposed upon the lands liable therefor as therein set forth; which said special assessment, with a sum sufficient to cover interest thereon at the rate aforesaid, shall be payable in...................equal annual instalments of $.................each, and for that purpose the special annual rates per foot frontage set forth in Schedule 1 hereto attached, are hereby imposed upon the lots entered in the said special assessment roll, according to the assessed frontage thereof, over and above all other rates and taxes, and the said special rates shall be collected annually by the collector of taxes for the Corporation at the same time and in the same manner as other rates.

6. The debentures may contain any clause providing for the registration thereof, authorized by any statute relating to Municipal debentures in force at the time of the issue thereof.

7. The amount of the loan authorized by this by-law may be consolidated with the amount of any loans authorized by other local improvement by-laws, by including the same with such other loans in a consolidating by-law authorizing the borrowing of the aggregate thereof as one loan, and the issue of debentures for such loan in one consecutive issue, pursuant to the provisions of the statute in that behalf.

8. This by-law shall take effect on the day of the final passing thereof.

Passed this..............day of..............19....

Mayor (*or* Reeve).

Seal of
Corporation

Clerk.

FORM 14.

SCHEDULE 1.

ATTACHED TO DEBENTURE BY-LAW NO.

This form is to be used in connection with both forms of debenture by-laws if the rate per foot frontage is not the same on all the lots.

Name of Owner.	Street.	Side of Street.	Lot Assessed.	Number of feet assessed.	Total cost per foot frontage with which each lot is assessed.	Amount to be paid annually to pay debt and interest.	Annual rate per foot frontage.
Lots abutting on work.							

Exempt Lots, the Assessment upon which is payable by the Corporation.

Lots not abutting upon the work.

FORM 15.

CONSOLIDATING BY-LAW. SINKING FUND PLAN.

BY-LAW NO. ......

By-law to consolidate the sums authorized to be borrowed by certain local improvement by-laws into one sum of $.........., and to borrow the same by the issue of debentures therefor.

WHEREAS the Municipal Council of the Corporation of the ....of..................has passed the by-laws hereinafter mentioned providing for borrowing money by the issue of debentures to pay for the construction of certain works, as local improvements, therein referred to, namely:—

No. of By-law.	When Passed.	Nature of Work.	Situation of Work.	Amount of Loan.

AND WHEREAS the aggregate of the sums authorized by the said by-laws to be borrowed is the sum of $.................... and it is desirable to consolidate the said sums into one sum of

$..................and to issue debentures therefor in one consecutive issue, which is the amount of the debt intended to be created by this by-law.

And Whereas all of the said by-laws provide that the debentures to be issued thereunder shall be payable within......... years after the time when the same are issued and shall bear interest at the rate of...................per cent. per annum, payable.................yearly.

And Whereas the amount of the whole rateable property of the municipality according to the last revised assessment roll is $...............

And Whereas the amount of the existing debenture debt of the municipality, exclusive of local improvement debts secured by special rates or assessments, is $..............., and no part of the principal or interest is in arrear.

Therefore the Municipal Council of the Corporation of the ....of.................enacts as follows:—

1. The sums authorized by the said by-laws to be borrowed are hereby consolidated into one sum of $...............

2. For the purpose aforesaid there shall be borrowed on the credit of the Corporation at large the sum of $................. and debentures shall be issued therefor in one consecutive issue in sums of not less than $100 each, which shall have coupons attached thereto for the payment of the interest.

3. The debentures shall all bear the same date and shall be issued within two years after the day on which the earliest of the said by-laws was passed, and may bear any date within such two years and shall be payable within...............years after the time when the same are issued.

4. The debentures shall bear interest at the rate of......... per cent. per annum, payable...............yearly, and as to both principal and interest may be expressed in Canadian currency or Sterling money of Great Britain at the rate of one pound Sterling for each four dollars and eighty-six and two-thirds cents, and may be payable at any place or places in Canada or Great Britain.

5. The Mayor (*or* Reeve) of the Corporation shall sign and issue the debentures and interest coupons and the same shall also be signed by the Treasurer of the Corporation, and the debentures shall be sealed with the seal of the Corporation.

☞ *In the case of a city it is unnecessary that the coupons be signed by the Mayor.*

6. The money to be borrowed as aforesaid shall be apportioned, crediting each work with the amount of the loan provided for by the by-law relating thereto as above set forth.

7. This by-law shall come into force and take effect on the day of the final passing thereof.

Passed this................day of..............19....

Mayor (*or* Reeve).

Clerk.

Seal of
Corporation

FORM 16.

CONSOLIDATING BY-LAW—INSTALMENT PLAN.

BY-LAW NO. ......

By-law to consolidate the sums authorized to be borrowed by certain local improvement by-laws into one sum of $..........., and to borrow the same by the issue of debentures therefor.

WHEREAS the Municipal Council of the Corporation of the ....of....................has passed the by-laws hereinafter mentioned providing for borrowing money by the issue of debentures to pay for the construction of certain works, as local improvements, therein referred to, namely:— .

No. of By-law.	When Passed.	Nature of Work.	Situation of Work.	Amount of Loan.

AND WHEREAS the aggregate of the sums authorized by the said by-laws to be borrowed is the sum of.................... dollars and it is desirable to consolidate the said sums into one sum of $................and to issue debentures therefor in one consecutive issue, which is the amount of the debt intended to be created by this by-law.

AND WHEREAS all of the said by-laws provide that the debentures to be issued thereunder shall bear interest at the rate of ....per cent. per annum, and that the principal of the debt shall be repayable in yearly sums during the period of..................years, of such amounts respectively that the aggregate amount payable for principal and interest in any year shall be equal as nearly as may be to the amount so payable in each of the other years.

AND WHEREAS the amount of the whole rateable property of the municipality according to the last revised assessment roll is $................

AND WHEREAS the amount of the existing debenture debt of the municipality, exclusive of local improvement debts secured by special rates of assessments, is $.........., and no part of the principal or interest is in arrear.

THEREFORE the Municipal Council of the Corporation of the ....of................enacts as follows:—

1. The sums authorized by the said by-laws to be borrowed are hereby consolidated into one sum of $................

2. For the purpose aforesaid there shall be borrowed on the credit of the Corporation at large the sum of..............dollars and debentures shall be issued therefor in one consecutive issue in sums of not less than $100 each, bearing interest at the rate of...................per cent. per annum, and having coupons attached thereto for the payment of the interest.

3. The debentures shall all bear the same date and shall be issued within two years after the day on which the earliest of the said by-laws was passed, and may bear any date within such two years, and shall be payable in................annual instalments

during the................years next after the time when the same are issued, and the respective amounts of principal and interest payable in each of such years shall be as follows:—

No.	Principal.	Interest.	Total.
1			
2			
3			

4. The debentures, as to both principal and interest, may be expressed in Canadian currency or Sterling money of Great Britain, at the rate of one pound sterling for each four dollars and eighty-six and two-thirds cents, and may be payable at any place or places in Canada or Great Britain.

5. The Mayor (*or* Reeve) of the Corporation shall sign and issue the debentures and interest coupons and the same shall also be signed by the Treasurer of the Corporation and the debentures shall be sealed with the seal of the Corporation.

☞ *In the case of a city it is unnecessary that the coupons be signed by the Mayor.*

6. The money to be borrowed as aforesaid shall be apportioned, crediting each work with the amount of the loan provided for by the by-law relating thereto as above set forth.

7. This by-law shall come into force and take effect on the day of the final passing thereof.

Passed this...........day of............, 19....

Mayor (*or* Reeve).

Clerk.

Seal of
Corporation

FORM 17.

DEBENTURE—INSTALMENT PLAN.

(Without Coupons).

No.................... CANADA. $......................

PROVINCE OF ONTARIO.

....................*of*....................

DEBENTURE.

The Corporation of the.............of.................hereby promises to pay to the Bearer the sum of..................Dollars and..................Cents of lawful money of Canada, at the Office of the......................in the..............................on the ....day of.......................19...

This debenture, or any interest thereon, shall not, after a certificate of ownership has been endorsed thereon by the Treasurer of this Municipal Corporation, be transferable, except by entry, by the Treasurer or his Deputy, in the Debenture Registry Book of the said Corporation at the...............of.................

DATED AT...........*this*.............*day of*...........*one thousand nine hundred and*........

IN TESTIMONY WHEREOF *and under the authority of By-law No*...... *of the Municipal Council of the Corporation of the*.........................*passed on the*...........*day of*...............*19*.... *this debenture is sealed with the Seal of the Corporation and signed by the*..............*and Treasurer thereof.*

[SEAL OF CORPORATION.]

....

TREASURER.   MAYOR [*or* REEVE.]

FORM 18.

DEBENTURE—INSTALMENT OR SINKING FUND PLAN.

No.......................... CANADA $..............................

PROVINCE OF ONTARIO

......................*of*......................

DEBENTURE.

The Corporation of the...............*of*...............*hereby promises to pay to the Bearer the sum of*...............*Dollars and*......................*Cents of lawful money of Canada, at the Office of the*..................*in the*..................*on the*.................*day of*.................*19*.... *and to pay interest thereon in the meantime at the rate of*.........*per centum per annum*...........*yearly on the*............*day of*...........................*and of*...............*in each year to the Bearer of the annexed Coupons upon presentation thereof at the said Office, as they become due.*

This debenture, or any interest thereon, shall not, after a certificate of ownership has been endorsed thereon by the Treasurer of this Municipal Corporation, be transferable, except by entry, by the Treasurer or his Deputy, in the Debenture Registry Book of the said Corporation at the...............*of*........................

DATED AT...............*this*...............*day of*...................*one thousand nine hundred and*.............

IN TESTIMONY WHEREOF *and under the authority of By-law No*..........*of the Municipal Council of the Corporation of the*....................................*duly passed on the*................*day of*......................*19*..... *this debenture is sealed with the Seal of the said Corporation and signed by the*.................*and Treasurer thereof.*

[SEAL OF CORPORATION.]

....

TREASURER. MAYOR [*or* REEVE.]

DEBENTURE NO................

BY-LAW NO................ COUPON NO................

The Corporation of the............................*will pay to the Bearer at the Office of the*.................................*Ontario, on the*.............*day of*......................*19*........*the sum of $*.....................*interest due on that day on the above debenture.*

$..................... ....*Mayor*

.....................................*Treasurer*

FORM 19.

Debenture By-law.

(*Approved 3rd February, 1912.*)

BY-LAW NO.........

A By-law to provide for borrowing $..................upon debentures to pay for the construction of certain pavements.

Whereas pursuant to construction By-laws Nos............ passed on the..................day of...............19....., certain pavements have been constructed on the streets as shewn in Columns 2, 3 and 4 of the Schedule "A" hereto as local improvements under the provisions of The Local Improvement Act.

And Whereas the total cost of each of such works, the Corporation's portion thereof, and the owners' portion thereof, and for the owners' portion of the cost of each of which such works a Special Assessment Roll has been duly made and certified, are shewn in Columns 5, 6 and 7 respectively of the said Schedule.

And Whereas the estimated lifetime of each of the works is............................years, as shewn in Column 8 of the said Schedule.

And Whereas it is necessary to borrow the sum of $......... ....being the total cost of all of the said works, as shewn in Column 5 of the said Schedule, on the credit of the Corporation and to issue debentures therefor payable within.............................years from the time of the issue thereof, as shewn in Column 9 of said Schedule, and being interest at the rate of.....................per cent. per annum, which is the amount of the debt intended to be created by this by-law.

And Whereas it will be necessary to raise annually for the payment of the owners' portion of the debt, the sums shewn in Column 10 of the said Schedule and for the payment of the interest thereon the sums shewn in Column 11 of said Schedule, making in all $..................................to be raised annually for the payment of the owners' portion of the debt and interest, as shewn in Column 12 of said Schedule, and the sum specified in Column 13 is required to be raised annually to pay the Corporation's portion of the cost and the interest thereon, and the sum shewn in Column 14 is required to pay the total cost of the said works and the interest thereon.

And Whereas the amount of the whole rateable property of the municipality according to the last revised assessment roll is $..............................

And Whereas the amount of the existing debenture debt of the Corporation (exclusive of local improvement debts, secured by special rates or assessments and of the debt incurred for waterworks purposes and for the cost of a plant to distribute electric power) is $..............................and no part of the principal or interest is in arrear.

Therefore the Council of the Corporation of the City of Toronto enacts as follows:—

1. That for the purpose aforesaid there shall be borrowed on the credit of the Corporation at large the said sum of.............................. dollars ($....................), as shewn in Column 5 of said Schedule, and debentures shall be issued therefor in sums of not less than $100 each, which shall have coupons attached thereto for the payment of the interest.

2. The debentures shall all bear the same date and shall be issued within two years after the day on which this By-law is passed and may bear any date within such two years and shall be payable within..............................years after the time when the same are issued.

3. The debentures shall bear interest at the rate of.......... per cent. per annum payable....................yearly, and as to both principal and interest may be expressed in Canadian Currency or Sterling money of Great Britain at the rate of one pound sterling for each four dollars and eighty-six and two-thirds cents, and may be payable at any place or places in Canada or Great Britain.

4. The Mayor of the Corporation shall sign and issue the debentures, and the same shall also be signed by the Treasurer of the Corporation, and the debentures shall be sealed with the seal of the Corporation.

5. During.............................years, the currency of the debentures, as shewn in Column 9 of said Schedule, there shall be raised annually to form a sinking fund for the payment of the owners' portion of the debt the sums shewn in Column 10 of said Schedule, and there shall be raised annually for the payment of the interest thereon the sums shewn in Column 11, making in all $..............................to be raised annually, for the payment of the owners' portion of the debt and interest, as shewn in Column 12 of said Schedule, and for the payment of the Corporation's portion of the cost there shall be raised annually to form a sinking fund and for the payment of the interest thereon the sum shewn in Column 13 of said Schedule which shall be levied and raised annually by a special rate sufficient therefor over and above all other rates on all the rateable property in the municipality at the same time and in the same manner as other rates, making in all the sum of $.............., as shewn in Column 14 of said Schedule, to be raised annually for the payment of the said debt and interest.

For the payment of the owners' portion of the cost of each of the said works and the interest thereon, the special assessment set forth in the said special Assessment Rolls is hereby imposed upon the lands liable therefor as therein set forth; which said special assessment with a sum sufficient to cover interest thereon at the rate aforesaid shall be payable in................ equal annual instalments, as shewn in Column 9 of the said Schedule for the payment of the amounts shewn in Column 12 of said Schedule, and for that purpose the respective special rates per foot frontage, as shewn in Column 16 of the said Schedule, are hereby imposed upon each lot entered in the respective special Assessment Rolls for each of said works, according to the assessed frontage thereof, over and above all other rates and taxes, which said special rates shall be collected annually by the collector of taxes for the Corporation at the same time and in the same manner as other rates.

6. If at any time the owner of any of the said properties hereby assessed, or of any part thereof, shall desire to commute the assessment hereby imposed upon his said property by the payment of a principal sum in lieu thereof, he may so commute by the payment to the City Treasurer of such sum as will be required to realize at the maturity of the debentures to be issued hereunder, a sum equivalent to the then uncollected amount of the annual special rate hereby authorized to be levied in respect of the said particular property, such sum, during the first year after the passing of this By-law, being at the rate per foot shewn in the 17th Column of the Schedule hereto, and for any subsequent year at the rate proportionately reduced according to the number of years during which the annual rate imposed by Section 5 hereof shall have been then paid in respect of such property.

7. All money arising from the said special rates or from the commutation thereof not immediately required for the payment of interest shall be invested as required by law.

8. The debentures may contain any clause providing for the registration thereof authorized by any statute relating to Municipal debentures in force at the time of the issue thereof.

9. The amount of the loan authorized by this by-law may be consolidated with the amount of any loans authorized by other local improvement by-laws, by including the same with such other loans in a consolidating by-law authorizing the borrowing of the aggregate thereof as one loan and the issue of debentures for such loan in one consecutive issue pursuant to the provisions of the statute in that behalf.

10. This By-law shall take effect on the day of the final passing thereof.

Passed the................day of................, 19.....

SCHEDULE "A."

In this Schedule the letter "n." "s," "e," "w," or "b," indicates that the walks are laid, and are to be assessed against the properties on the north, south, east, west or both sides of the streets respectively.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
No.	Street.	From	To	Total Cost.	Corporation's Portion of Total Cost.	Owners' Portion of Total Cost.	Estimated Life-time of Work.	Currency of Debentures.	Amount Required to be Raised Annually for Owners' Portion.		Total Amount to be Raised Annually for Owners' Portion.	Total Amount to be Raised Annually for Corporation's Portion.	Total Amount to be Raised Annually for Payment of Debt.	Frontage of Assessable Properties.	Amount Rate per Foot Frontage.	Commutation Rate per Foot Frontage.
							Years.	Years.	Sinking Fund.	Interest.						Years.

FORM 20.

CONSTRUCTION BY-LAW.

(Approved 2nd April, 1917.)

CONSTRUCTION BY-LAW NO. . . . . . .

BY-LAW to authorize the construction of. . . . . .on. . . . . .Street from . . . . .to. . . . . as a Local Improvement under the provisions of The Local Improvement Act.

WHEREAS. . . . . .and others have petitioned the Council to construct, as a local improvement, the work hereinafter described, and the Clerk has certified that the petition is sufficient and it is expedient to grant the prayer of the petition in manner hereinafter provided.

or

WHEREAS notice of the intention of the Council to undertake the construction as a local improvement of the work hereinafter described, has been duly given by publication of the notice and by service of it upon the owners of the lots liable to be specially assessed, and the publication and service of such notice has been proved by a statutory declaration filed with the Clerk, and no petition against the work signed by a majority of the owners, representing at least one-half the value of the lots which are liable to be specially assessed, has been presented.

or

WHEREAS it is expedient that the construction of the work hereinafter described shall be undertaken as a local improvement and notice of the intention of the Council to undertake such work has been duly published.

or

WHEREAS a sewer has been constructed upon. . . . . .Street from. . . . . to. . . . . .and it is expedient to construct as a local improvement *private drain* connections from the sewer to the street line on the.................side of the street (*if connections are to be constructed on both sides insert* "on both sides of the street") connecting the sewer with the lots abutting thereon specified in Schedule 1, and notice of the intention of the Council to undertake the construction of such private drain connections has been duly given.

or

WHEREAS the Provincial Board of Health (*or*) the Local Board of Health of this Municipality (*as the case may be*) has recommended the construction (*or* the enlargement *or* the extension) of a (the) sewer on..........................Street from ....to.......................... and it is therefore necessary and desirable in the public interest on sanitary grounds to construct (*or* enlarge *or* extend) such sewer according to such recommendation as a local improvement.

THEREFORE the Municipal Council of the Corporation of the........................of........................ enacts as follows:

1. That a..................................be constructed on.......................street from.................... to..........................as a local improvement under the provisions of The Local Improvement Act.

or

1. That a....................pavement............... feet wide, be constructed on.......................Street, from..........................to...................... as a local improvement under the provisions of The Local Improvement Act.

Note.—If the Council determines to construct as part of the work a water main, a gas main, private drain connections, and alterations or renewals of water service pipes and stopcocks and of gas connections, or any or either of such works, set out the additional work to be undertaken, and set out in a schedule the lots to be specially assessed for such additional work.

or

1. That private drain connections be constructed as a local improvement, under the provisions of The Local Improvement Act applicable to such a work, from the sewer on............. Street from..........................to.................. to the street line on both sides (*or if on one side only insert* "on the.................side") of the street, connecting the sewer with the lots abutting on that part of the street specified in Schedule 1.

or

1. That a sewer (*describe kind of sewer and its dimensions*) be constructed as a local improvement, under the provisions of The Local Improvement Act, on.....................Street from ....to........................ (*if the Council so determines add*) with private drain connections to the line of the street connecting such sewer with the lots specified in Schedule 1.

or

1. (1) That it is determined and declared, this by-law being passed by a vote of two-thirds of all the members of the Council, that it is desirable that the construction of a.................. ....on..........................Street from..........................to....................... should be undertaken as a local improvement under the provisions of The Local Improvement Act.

(2) That as above determined and declared a ....be constructed on..................Street from..........................to....................... as a local improvement under the provisions of The Local Improvement Act.

2. The Engineer of the Corporation do forthwith make such plans, profiles and specifications and furnish such information as may be necessary for the making of a contract for the execution of the work, or for the carrying on and executing of the work by day labour.

3. The work shall be carried on and executed under the super-

intendence and according to the directions and orders of such Engineer.

4. The Mayor and Clerk are authorized to cause a contract for the construction of the work to be made and entered into with some person or persons, firm or corporation, subject to the approval of this Council to be declared by resolution, unless this Council decides, by resolution, to carry on and execute the work by day labour, in which event, the work shall be carried on and executed by day labour.

5. The Treasurer may (subject to the approval of the Council) agree with any bank or person for temporary advances of money to meet the cost of the work pending the completion of it.

6. The special assessment shall be paid by. . . . . .annual instalments (*this period must be within the lifetime of the work*).

7. The debentures to be issued for the loan to be effected to pay for the cost of the work when completed shall bear interest at. . . . . .per cent. per annum and be made payable within. . . . . .years on the instalment plan (*or if on the sinking fund plan insert* "on the sinking fund plan"), and in settling the sum to be raised annually to pay the debt, the rate of interest on investments shall not be estimated at more than four per cent. per annum.

8. Any person whose lot is specially assessed may commute for a payment in cash the special rates imposed thereon, by paying the portion of the cost of construction assessed upon such lot, without the interest, forthwith after the Special Assessment Roll has been certified by the Clerk, and at any time thereafter by the payment of such sum as when invested at four per cent. per annum will provide an annuity sufficient to pay the special rates for the unexpired portion of the term as they fall due.

Passed this. . . . . .day of. . . . . .19. . . . .

SEAL

. . . .
Mayor.

. . . .
Clerk.

ARBITRATION.

An Act Respecting Arbitration and References.

R.S.O. c. 65.

☞ **This Act is included because it is referred to in the Municipal Act. It is not annotated, but the annotation of those parts of it which relate to municipal matters will be found in the notes to Part XVI. of the Municipal Act.**

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Arbitration Act.* 9 Edw. VII. c. 35, s. 1.

Interpretation.

2. In this Act,

"Court."

(*a*) "Court" shall mean the Supreme Court;

"Judge."

(*b*) "Judge" shall mean a Judge of the Supreme Court;

"Rules of Court." Rev. Stat. c. 56.

(*c*) "Rules of court" shall mean the rules of the Supreme Court made under *The Judicature Act;*

"Submission."

(*d*) "Submission" shall mean a written agreement to submit present or future differences to arbitration, whether or not an arbitrator is named therein. 9 Edw. VII. c. 35, s. 2.

APPLICATION OF ACT.

To the Crown.

3. This Act shall apply to an arbitration to which His Majesty is a party. 9 Edw. VII. c. 35, s. 3.

References under statutory powers.

4. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognized by that Act. 9 Edw. VII. c. 35, s. 4.

REFERENCES BY SUBMISSION.

Generally.

Irrevocability of submission.

Effect.

5. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court, and shall have the same effect as if it had been made an order of court. 9 Edw. VII. c. 35, s. 5.

What submission to include.

6. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in Schedule A, so far as they are applicable to the reference. 9 Edw. VII. c. 35, s. 6.

Official referee to act when applied to.

7. Where a submission provides that the reference shall be to an official referee any official referee to whom application is made shall hear and determine the matters agreed to be referred. 9 Edw. VII. c. 35, s. 7.

Staying legal proceedings taken after submission.

8. If any party to a submission, or any person claiming through or under him, commences any legal proceeding in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceeding may at any time after appearance and before delivering any pleading or taking any other step in the proceeding apply to that court to stay the proceeding; and that court, or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was at the time when the proceeding was commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceeding. 9 Edw. VII. c. 35, s. 8.

Appointment of Arbitrator or Umpire by Court.

9.—(1) In any of the following cases:

Failure to concur.

(*a*) Where a submission provides that the reference shall be to a single arbitrator and the persons whose concurrence is necessary do not, after differences have arisen, concur in the appointment of an arbitrator; or

(*b*) Where an arbitrator, an umpire or a third arbitrator is to be appointed by any person, and such person does not make the appointment; or

Failure to appoint.

(*c*) Unless the submission otherwise provides, where an arbitrator, an umpire or a third arbitrator refuses to act or is incapable of acting or dies, and the vacancy is not supplied by the person having the right to fill the vacancy,

Vacancies not filled.

any party may serve the other party or the arbitrators, or the person who has the right to make the appointment, as the case may be, with a written notice to concur in the appointment of a single arbitrator or to appoint an arbitrator, umpire or third arbitrator.

Remedy.

(2) If the appointment is not made within seven clear days after the service of the notice the Court or a Judge may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties. 9 Edw. VII. c. 35, s. 9.

When court may appoint.

Powers of appointee.

Powers of Arbitrators.

10. An arbitrator or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power

Powers of arbitrators.

(*a*) to administer oaths to the parties and witnesses;

(*b*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(*c*) to correct in an award any clerical mistake or error arising from any accidental slip or omission. 9 Edw. VII. c. 35, s. 10.

Enlarging time for making award.

11. The time for making an award may from time to time be enlarged by the Court or a Judge whether or not the time for making the award has expired. 9 Edw. VII. c. 35, s. 11.

Remitting for reconsideration.

12.—(1) The Court may remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

When award to be made.

(2) The arbitrators or umpire shall, unless the order otherwise directs, make the award within three months after the date of the order. 9 Edw. VII. c. 35, s. 12.

Removal of arbitrator.

13.—(1) Where an arbitrator or umpire has misconducted himself the Court may remove him.

Setting aside award.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside. 9 Edw. VII. c. 35, s. 13.

Enforcing award.

14. An award may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order to the same effect. 9 Edw. VII. c. 35, s. 14.

Witnesses and Evidence.

Subpœnaing witnesses.

15. Any party to a submission may sue out of the Court a writ of subpœna *ad testificandum*, or a writ of subpœna *duces tecum*, but no person shall be compelled under any such writ to produce any document which he would not be compellable to produce on the trial of an action. 9 Edw. VII. c. 35, s. 15.

Production.

Commission to examine witnesses.

16.—(1) Where a party to a submission desires to procure for use upon the reference the evidence of any person to be taken *de bene esse* or to be taken out of Ontario an order may be made for the examination of such person or for the issue of a commission in the like circumstances and with the like effect as a similar order may be made in an action.

Application of Rev. Stat. c. 56 and Rules.

(2) The provisions of *The Judicature Act* and Rules of court shall apply to such order or commission and to the proceedings

thereon and the evidence taken thereunder. 9 Edw. VII. c. 35, s. 16.

Appeal from Award.

Where submission provides for appeal.

17.—(1) Where it is agreed by the terms of the submission that there may be an appeal from the award the reference shall be conducted and an appeal shall lie to a Judge of the Supreme Court and to a Divisional Court in the same manner, and subject to the same restrictions, as in the case of a reference under an order of the court.

Transmission of evidence.

(2) The evidence of the witnesses examined upon such reference shall be taken down in writing and shall, at the request of either party, be transmitted by the arbitrator or umpire, as the case may be, together with the exhibits, to the Central Office at Osgoode Hall.

Statement of proceeding on a view or special knowledge of arbitrators.

(3) Where the arbitrators proceed wholly or partly on a view or any knowledge or skill possessed by themselves or any of them they shall also put in writing a statement thereof sufficiently full to enable a judgment to be formed of the weight which should be attached thereto. 9 Edw. VII. c. 35, s. 17.

FEES AND COSTS.

Interpretation.

18. In sections 19 to 27,

"Arbitrator."

"Arbitrator" and "arbitrators" shall include an umpire and a referee in the nature of an arbitrator; and

"Award."

"Award" shall include umpirage and a certificate in the nature of an award. 9 Edw. VII. c. 35, s. 18.

Fees to arbitrators not being barristers, architects, etc.

19. An arbitrator, who is not by profession a barrister, solicitor, engineer, architect, or Dominion or Ontario land surveyor, shall not be entitled to demand or take for his attendance and services as an arbitrator any greater fees than those mentioned in Schedule B, except as provided in section 21. 9 Edw. VII. c. 35, s. 19.

Fees to arbitrators, being

20. An arbitrator, who is by profession a barrister, solicitor, engineer, architect, or Dominion or Ontario land surveyor, shall barristers, architects, etc. not be entitled to demand or take for his attendance and services as an arbitrator any greater fees than those mentioned in Schedule C, except as provided in section 21. 9 Edw. VII. c. 35, s. 20.

Agreement as to fees to be paid to arbitrators. **21**. The parties to a submission may agree, by writing signed by them or by making such agreement a part of the submission, to pay to the arbitrator or to the arbitrators, if more than one, such fees for each day's attendance, or such gross sum for taking upon themselves the burden of the reference and making the award, as the parties see fit, and in every such case the fees or sum so agreed upon shall be substituted for those mentioned in Schedules B and C, and shall be taxed by the taxing officer accordingly. 9 Edw. VII. c. 35, s. 21.

Fees to witnesses. **22.** No greater fees shall be taxed to a person called as a witness before an arbitrator than would be taxed to him in an action in the Supreme Court. 9 Edw. VII. c. 35, s. 22.

Costs of meeting where no proceedings. **23**. Where, at a meeting of arbitrators of which due notice has been given, no proceedings are taken in consequence of the absence of any party, or of a postponement at the request of any party, the arbitrators shall make up an account of the costs of the meeting, including the proper charges for their own attendance and that of any witnesses, and of the counsel or solicitor of the party present, and not desiring the postponement, and unless under the special circumstances of the case they think it would be unjust so to do, they shall charge the amount thereof, or of the disbursements, against the party in default or at whose request the postponement is made, and the last mentioned party shall pay the same to the other party, whatever may be the event of the reference, and the arbitrators shall, in the award, make any direction necessary for that purpose, and the amount so charged may be set off against, and deducted from any amount awarded in his favour. 9 Edw. VII. c. 35, s. 23.

Taxation at instance of parties. **24.**—(1) Any party to an arbitration shall be entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, taxed by one of the taxing officers of the Supreme Court, at Toronto upon an appointment which may be given by the taxing officer for that purpose on the filing of an affidavit setting forth the facts.

At instance of arbitrators.

(2) A taxation of the fees of the arbitrators may be had upon an appointment given at the instance of the arbitrators or any of them upon a like affidavit. 9 Edw. VII. c. 35, s. 24.

Discretion of taxing officer.

25.—(1) The taxing officer shall in no case, except as provided in section 21, tax higher fees than are mentioned in Schedules B and C, but, upon reasonable grounds, he may reduce the maximum mentioned in the Schedules, but not below the minimum, having always regard to the length of the arbitration, the value of the matter in dispute, and the difficulty of the questions to be decided; but he shall not tax more than one counsel fee to either party for any meeting of the arbitrators.

Costs of award.

(2) The taxing officer may tax a reasonable sum for preparing the award.

Revision of taxation.

(3) An appeal may be had from such taxation in the same manner as from a taxing officer's certificate of taxation in an action. 9 Edw. VII. c. 35, s. 25.

Penalty for arbitrator attempting to exact excessive fees.

26. An arbitrator who, after having entered upon the reference refuses or delays after the expiration of one month from the, publication of the award to deliver the same until a larger sum is paid to him for his fees than is by this Act permitted, or who receives for his award or for his fees as arbitrator any such larger sum, shall forfeit and pay to the party who has demanded delivery of the award or who has paid to the arbitrator such larger sum in order to obtain, or as a consideration for having obtained it, treble the excess so demanded or received by the arbitrator contrary to the provisions of this Act, to be recovered by action in a court of competent jurisdiction. 9 Edw. VII. c. 35, s. 26.

Arbitrator to have action for fees.

27. Where an award has been made the arbitrator may maintain an action for his fees after the same have been taxed; and in the absence of an express agreement to the contrary he may maintain such action against all the parties to the reference, jointly or severally. 9 Edw. VII. c. 35, s. 27.

GENERAL PROVISIONS.

Order to sheriff to produce prisoner as witness.

28. A Judge may order the sheriff, goaler or other officer having the custody of a prisoner to produce him for examination before an arbitrator or an umpire. 9 Edw. VII. c. 35, s. 28.

Case stated for opinion of Court.

29. An arbitrator or an umpire may at any stage of the proceedings and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. 9 Edw. VII. c. 35, s. 29.

Costs in discretion of Court.

30. An order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just. 9 Edw. VII. c. 35, s. 30.

Dispensing with filing original exhibits.

31. An arbitrator or an umpire, where no special reason appears to him to exist for filing an original book, paper or document as an exhibit, as hereinbefore provided, may allow a copy thereof or of such portion thereof as he may deem material to be substituted as an exhibit in the place of the original book, paper or document. 9 Edw. VII. c. 35, s. 31.

Production of exhibits on appeal or motion to set aside award.

32. Upon an appeal from or motion to set aside an award any party may by notice require any other party to produce, and the party so required shall produce upon the hearing of the appeal or motion any original book, paper or document in his possession which has been used as an exhibit or given in evidence upon the reference, and which has not been filed with the depositions. 9 Edw. VII. c. 35, s. 32.

Time for moving to set aside.

33.—(1) Unless by leave of the Court or a Judge, an application to set aside an award, otherwise than by way of appeal, shall not be made after six weeks from the publication of the award.

(2) Such leave may be granted before or after the expiration of the six weeks.

Time within which leave may be granted.

(3) In the computation of time for appealing against, or applying to set aside an award, the vacations shall not be reckoned. 9 Edw. VII. c. 35, s. 33.

Vacations not reckoned.

(4) When an award is set aside the Court or a Judge setting aside the same may give directions as to the costs of the reference and award. 3-4 Geo. V. c. 18, s. 16.

Costs of reference and award when award set aside.

34. Rules of court for the better carrying out of the purposes of this Act and regulating the practice thereunder may be made by any authority to whom is committed power of making rules of court. 9 Edw. VII. c. 35, s. 34.

Powers to make rules.

35. Any Act, enactment or instrument referring to any Act or enactment repealed by the Act passed in the 60th year of the reign of Her late Majesty Queen Victoria, chaptered 16, intituled *An Act for Amending and Consolidating the enactments respecting References and Arbitration*, or by this Act shall be construed as referring to this Act. 9 Edw. VII. c. 35, s. 35.

Construction of reference to repealed enactments.

VALUATORS.

36.—(1) The Court or a Judge shall have power to appoint a valuator, valuer or appraiser, where it is provided by a written agreement that a valuation or appraisement shall be made by a valuator, valuer or appraiser.

Appointment of valuator, etc.

(2) The power may be exercised in the like cases and the proceedings shall be the same as provided by section 9, except that the Court or a Judge shall not have power to appoint a valuator, valuer or appraiser in the place of one who is named in the agreement and who refuses to act, is incapable of acting or dies. 9 Edw. VII. c. 35, s. 36.

When power exerciseable.

Procedure thereon.

Expected Case.

SCHEDULE A.

(*Section 6.*)

Provisions to be implied in Submissions.

(*a*) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(*b*) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(*c*) If any arbitrator or umpire or third arbitrator refuses to act, or is incapable of acting or dies the party or parties, or the arbitrators by whom he was appointed, may appoint an arbitrator, umpire or third arbitrator, as the case may be, in his stead, and this power may be exercised from time to time as vacancies occur.

(*d*) The submission shall not be revoked by the death of the parties or either of them.

(*e*) The award shall be delivered to any of the parties requiring the same; and the personal representatives of any party deceased may require delivery of the award.

(*f*) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators by any writing signed by them, may from time to time enlarge the time for making the award.

(*g*) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(*h*) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

(*i*) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath in relation to the matters in dispute, and shall subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, documents and things within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(*j*) The witnesses on the reference shall be examined on oath.

(*k*) The award to be made by the arbitrators or by a majority of them or by the umpire shall be final and binding on all the parties and the persons claiming under them respectively.

(*l*) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may award costs to be paid as between solicitor and client.

9 Edw. VII. c. 35, Schedule A.

SCHEDULE B.

(*Section 19.*)

FEES CHARGEABLE BY NON-PROFESSIONAL ARBITRATORS.

For every meeting where the reference is not proceeded with, but a postponement is made at the request of any party, not less than	$2.00
Nor more than	4.00
For every day's sittings, to consist of not less than six hours, not less than	5.00
Nor more than	10.00
Where a day's sittings consists of more than six hours,	
For each additional hour, not less than	1.00
Nor more than	1.50
For every sittings not extending to six hours (fractional parts of hours being excluded) where the reference is actually proceeded with, for each hour occupied,	
Not less than	1.00
Nor more than	1.50

9 Edw. VII. c. 35, Schedule B.

SCHEDULE C.

(*Section 20.*)

FEES CHARGEABLE BY PROFESSIONAL ARBITRATORS.

For every meeting where the reference is not proceeded with but a postponement is made at the request of any party, not less than	$4.00
Nor more than	8.00
For every day's sittings, to consist of not less than six hours, not less than	10.00
Nor more than	20.00
Where a day's sittings consists of more than six hours,	
For each additional hour, not less than	2.00
Nor more than	3.00
For every sittings not extending to six hours (fractional parts of hours being excluded) where the reference is actually proceeded with, for each hour occupied,	
Not less than	2.00
Nor more than	3.00

9 Edw. VII. c. 35, Schedule C.

MUNICIPAL FRANCHISES.

An Act respecting the Granting of Franchises by Municipal Councils.

R.S.O. c. 197, as amended by 5 Geo. V. c. 38, s. 1.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Municipal Franchises Act*. 2 Geo. V. c. 42, s. 1.

Interpretation.

2. In this Act,

"Franchises."

(*a*) "Franchises" shall include any right or privilege to which this Act applies;

"Highway."

(*b*) "Highway" shall include a street and a lane;

"Public Utility."

(*c*) "Public Utility" shall include waterworks, natural and other gas works, electric light, heat, or power works, steam heating works, and distributing works of every kind. 2 Geo. V. c. 42, s. 2.

Franchise not to be granted without assent of electors.

3.—(1) The Council of a municipality shall not grant to any individual, firm or company, nor shall any individual, firm or company acquire the right to use or occupy any of the highways of the municipality or to constuct or operate any railway, street railway, or public utility in the municipality, or to supply to the corporation, or to the inhabitants of the municipality, or to any of them, gas, including natural gas, electric light, heat or power or steam unless or until a by-law setting forth the terms and conditions upon which and the period for which such right is to be granted has been assented to by the municipal electors, as provided by *The Municipal Act*, with respect to by-laws requiring the assent of the electors.

Rev. Stat. c. 192.

In police villages.

(2) Where the trustees of a police village request the council of the township in which the village is situate to grant any such right with respect to the village, or where the board of trustees of a police village desire to grant such a right it shall be a sufficient compliance with subsection 1 if the by-law receives the assent of the municipal electors of the village.

Renewals and extensions.

(3) This section shall apply to the renewal or extension of an existing franchise. 2 Geo. V. c. 42, s. 3.

Extension of certain existing works not to be made without by-law.

4.—(1) Where a by-law granting a franchise or right in respect of any of the works or services mentioned in subsection 1 of section 3, which has not been assented to by the municipal electors as provided by that subsection, was passed before the 16th day of April, 1912, no extension of or addition to the works or services constructed, established or operated under the authority of such by-law as they existed and were in operation at that date shall be made except under the authority of a by-law hereafter passed with the assent of the municipal electors, as provided by subsection 1 or subsection 2 of section 3, and such consent shall be necessary notwithstanding that such last mentioned by-law is expressly limited in its operation to a period not exceeding one year.

Exceptions as to franchises granted before 16th March, 1909.

(2) Subsection 1 shall not apply to any franchise or right granted by or under the authority of any general or special Act of this Legislature before the 16th day of March, 1909, but no such franchise or right shall be renewed, nor shall the term thereof be extended by a municipal corporation except by by-law passed with the assent of the municipal electors as provided in section 3. 2 Geo. V. c. 42, s. 4.

It has been held that the assent of the electors is not required for an extension after 16th March, 1909, of a railway the construction of which was authorized by a by-law passed before that day, Mitchell v Sandwich, Windsor and Amherstburg R. Co. (1914), 32 O.L.R. 594, 22 D.L.R. 531.

Exceptions.

5. Except where otherwise expressly provided this Act shall not apply to a by-law—

(*a*) Granting the right of passing through the municipality for the purpose of continuing a line, work or system which is intended to be operated in or for the benefit of another municipality and is not used or operated in the municipality for any other purpose except that of supplying natural gas or electric light or power in a township to persons whose land abuts on a highway along or across which the same is carried or conveyed; [or to persons whose land lies within such limits as the council by by-law passed from time to time determines should be supplied with any of such services.]

Works originating in another municipality.

(*b*) Conferring the right to construct, use and operate works required for the transmission of oil, natural gas or water not intended for sale or use in the municipality;

Oil, natural gas and water-works.

(*c*) Which is expressly limited in its operation to a period not exceeding one year and is approved by the Ontario Railway and Municipal Board;

Limited to one year.

(*d*) Of a county or township which is approved by the Lieutenant-Governor in Council. 2 Geo. V. c. 42, s. 5; 5 Geo. V. c. 38, s. 1.

Counties and townships.

The words in brackets were added by 5 Geo. V. c. 38, s. 1.

6. Where a by-law to which clause (*c*) of section 5 applies is hereafter passed that clause shall not apply to any subsequent by-law in respect to the same works or any part of them or to an extension of or addition to them, although such subsequent by-law is expressly limited in its operation to a period not exceeding one year, and no such subsequent by-law shall have any force or effect unless it is assented to by the municipal electors as provided by subsection 1 of section 3. 2 Geo. V. c. 42, s. 6.

Extensions of one-year franchise from year to year prohibited.

MUNICIPAL ARBITRATIONS.

An Act Respecting Municipal Arbitrations.

R.S.O. c. 199, as amended by 7 Geo. V. c. 27, s. 33.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Municipal Arbitrations Act.* 3-4 Geo. V. c. 49, s. 1.

The cases as to municipal arbitrations are noted under the arbitration sections of the Municipal Act, R.S.O. c. 192, Part XVI.

Appointment of Official Arbitrator.

Rev. Stat. c. 192.

2.—(1) All claims against the corporation of a city having a population of not less than 100,000, and all claims made jointly against such corporation and the corporation of an adjoining municipality for compensation or damages for land expropriated or injuriously affected under *The Municipal Act,* and all other claims and questions arising under any lease or other contract to which the corporation is a party, and which by law or by the terms of the lease or contract are to be determined by arbitration, shall be heard and determined by an official referee appointed by the Lieutenant-Governor in Council and who shall be called the Official Arbitrator. 3-4 Geo. V. c. 49 s. 2 (1); 6 Edw. VII. c. 44, s. 1.

Powers, etc., of Official Arbitrator. Qualification.

(2) The Official Arbitrator shall

(*a*) be a barrister of at least ten years' standing at the bar of Ontario;

Powers. Rev. Stat. c. 56. Rev. Stat. c. 192. Rev. Stat. c. 65.

(*b*) have all the powers of an official referee under *The Judicature Act* and of an arbitrator under *The Municipal Act* or under *The Arbitration Act;*

(*c*) be an officer of the Supreme Court; Status.

(*d*) not act as solicitor or counsel for or against the corporation or for any other municipal corporation; Disability.

(*e*) have all the powers of a Judge of the Supreme Court including those relating to the production of books and papers, the amendment of notices for compensation or damage and of all other notices and proceedings, the rectification of errors or omissions, the time and place of taking examinations and views, the assistance of engineers, surveyors or other experts, and as respects all matters incident to the hearing and determination of matters before him or proper for doing complete justice therein between the parties, including the power of awarding costs. 3-4 Geo. V. c. 49, s. 2. Other powers.

Where a submission to arbitration under *The Municipal Arbitrations Act* R.S.O. 1897, c. 227, was silent as to costs, s. 2 (6) of the Act applied and empowered the arbitrator to deal with them: In re Dalton and Toronto (1906), 12 O.L.R. 582.

s. 2 (6) is now s. 2 (2 cl. (e)) of this Act and by it express power to award costs is conferred.

3. If any person interested in any such claim or question desires that the same should be determined by the Official Arbitrator he shall give to the clerk of the municipality and to every other person interested seven clear days' notice that the same is so referred, specifying therein the nature of the claim or question to be determined, and the amount in controversy; and upon such notice, with proof of the service of it, being filed with him the Official Arbitrator may proceed to hear and determine the matters so referred to him. 3-4 Geo. V. c. 49, s. 3. Commencement of proceedings under Act.

4. Where the Official Arbitrator proceeds partly on view or upon any special knowledge or skill possessed by himself he shall put in writing as part of his reasons a statement of such matter sufficiently full to allow the Divisional Court to determine the weight which should be attached to it. 3-4 Geo. V. c. 49, s. 4. When arbitrator to state reasons in writing.

Filing award.

5. The award of the Official Arbitrator, with his notes of evidence and exhibits and the reasons of his decision, shall be filed in the office of the registrar of the Appellate Division, and notice of the filing shall forthwith be given by the Official Arbitrator to the parties who appeared or were represented upon the reference or to their solicitors; and upon the request of any of the parties interested in the inquiry the notes taken by the shorthand writer if any, shall be extended by him and, upon payment of his proper fees therefor, shall be filed with the registrar. 3-4 Geo. V. c. 49, s. 5.

Extending notes of evidence.

Fees to be paid before award made public.

6. The award when so filed shall not be made public until all the fees payable to the Official Arbitrator have been paid to him. 3-4 Geo. V. c. 49, s. 6.

Appeal to Divisional Court.

7. The award may be appealed against to a Divisional Court in the same manner as the decision of a Judge of the Supreme Court sitting in Court is appealed from, and [subject to section 347 of *The Municipal Act.*] shall be binding and conclusive upon all parties to the reference unless appealed from within six weeks after notice that it has been filed. 3-4 Geo. V. c. 49, s. 7. 7 Geo. V. c. 27, s. 33 (1).

The words in brackets were added by 7 Geo. V. c. 27, s. 33 (1), in order to remove doubts (probably unfounded) as to the application of s. 347 to Municipal Corporations to which this act applies but the amendment "shall not in any way affect or apply to the rights of any person under an award" made before it was enacted. 7 Geo. V. c. 27, s. 33 (2).

Vacation.

8. The time of any vacation of the Supreme Court shall not be reckoned in the computation of the time for doing any act or taking any proceeding in relation to the appeal. 3-4 Geo. V. c. 49, s. 8.

Giving out exhibits when no appeal.

9. Where no appeal is taken within the prescribed time, or when an appeal has been disposed of, the exhibits may be delivered out to the parties entitled to them. 3-4 Geo. V. c. 49, s. 9.

10. Where an action has been brought or is pending the Court or a Judge thereof, if of opinion that the relief sought is properly the subject of a proceeding under this Act, on the application of either party or otherwise, may at any stage of the action order it to be transferred to the Official Arbitrator on such terms as to costs and otherwise as may be deemed proper; and the Official Arbitrator shall thereupon give such directions as to the prosecution of the claim before him as he may deem just and convenient, and, subject to the provisions, if any, in respect thereto in the order of transfer, the costs of the action shall be in his discretion. 3-4 Geo. V. c. 49, s. 10.

Transferring actions to Arbitrator.

11. Costs awarded by the Official Arbitrator shall be taxed by one of the taxing officers of the Supreme Court, and shall be taxed upon such scale and be payable to such parties as may be determined by the Official Arbitrator. 3-4 Geo. V. c. 49, s. 11.

How costs to be taxed.

12.—(1) The Official Arbitrator shall be entitled to be paid for his services while sitting upon any arbitration at the rate of $20 per day, or a proportionate part thereof where a sittings upon any one day occupies less than a whole day; and for a meeting, at which the reference is not proceeded with but a postponement is made at the request of any party, $4.

Fees of Official Arbitrator.

(2) One-half of such fees shall be payable by each of the parties to the reference if only two parties are interested, and proportionately by all parties interested if a larger number than two are so interested; but the Official Arbitrator shall have power to award that any sum so paid or payable may be recoverable by any one or more of the parties from any other or others of them, and such fees shall be recoverable as any other costs of the arbitration.

By whom payable.

(3) If the award is not taken up within thirty days after service upon the parties of the notice of filing thereof the fees

Recovery of fees.

and expenses of the Official Arbitrator shall be recoverable by action from any one or more of the parties to the arbitration.

Idem.

(4) Nothing herein shall prejudicially affect the right of the arbitrator to recover his fees or expenses in any way in which they may now be recovered. 3-4 Geo. V. c. 49, s. 12.

Appointment of assessor.

13.—(1) The Lieutenant-Governor in Council may appoint for such municipality an assessor of sound judgment, experience and knowledge in and as to matters relating to real property within the municipality to sit with the Official Arbitrator.

In what cases to be called in.

(2) The assessor shall be called upon by the Official Arbitrator—

(*a*) upon the request of all the parties to an arbitration, and at any stage of the proceedings; or

(*b*) Where the Official Arbitrator desires his advice and assistance, and no party to the proceedings objects thereto, at the time he is so called upon.

Function of Assessor.

(3) The assessor shall not make or join in the award, but shall otherwise give the Official Arbitrator such assistance as he may require.

Assessor's fee.

(4) The assessor shall be entitled for his services while sitting on an arbitration to be paid at the rate of $10 per day, or a proportionate part thereof where a sitting on any one day occupies less than a whole day; and for a meeting where the reference is not proceeded with but a postponement is made at the request of any party, $2.

How Payable.

(5) The fees of the assessor shall be payable by the same parties and in the same proportion and manner and shall be recoverable in the same way as those of the arbitrator, and shall be treated in all respects in the same manner as the fees of the arbitrator

as to the ultimate payment thereof and as to the manner of such payment. 3-4 Geo. V. c. 49, s. 13.

Power to make rules and tariff.

Rev. Stat. c. 56.

14.—(1) The Judges of the Supreme Court shall have the same power to make rules with respect to matters and proceedings under this Act and tariffs of fees as they have in respect to proceedings under *The Judicature Act.*

Publication of rules and tariff.

(2) Such rules and tariffs shall be published in the *Ontario Gazette* and shall thereupon have the force of law, and the same shall be laid before the Assembly forthwith after such publication if the Assembly is then in session, and if it is not then in session then within fifteen days after the opening of the next session. 3-4 Geo. V. c. 49, s. 14.

Application of Act.

15.—(1) This Act shall extend and apply to the County of York and to the Township of York, and to any municipality the council of which by by-law declares that it is desirable that the municipality shall be brought within the provisions of this Act; and in that case this Act shall be read as though it had been expressly applied to such municipality by the terms thereof.

Appointment in such cases.

(2) Where the council of any such municipality has by by-law so declared, or shall hereafter so declare, an Official Arbitrator may be appointed for such municipality by the Lieutenant-Governor in Council; and he shall have and may exercise within such municipality all the powers conferred upon the Official Arbitrator by this Act.

Repeal of by-law bringing Act into force.

(3) The council of a municipality which has passed a by-law under subsection 1 may repeal it at any time after the expiration of six months from the passing of the by-law; and upon such repeal this Act shall cease to apply or be in force in such municipality. 3-4 Geo. V. c. 49, s. 15.

PUBLIC UTILITIES.

An Act respecting the Construction and Operation of Works for supplying Public Utilities by Municipal Corporations and Companies.

R.S.O. c. 204, as amended by 4 Geo. V. c. 2, Sched. (34), c. 35; 7 Geo. V. c. 14, s. 13, c. 47, ss. 1, 2 and 4.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

The following provisions of The Power Commission Act, Rev. Stat., c. 39, should be read in connection with this Act:

Section 18, as amended by section 6 of The Power Commission Act, 1917, respecting the application by municipal corporations to the commission for a supply of power and the entering into a contract with the commission and the submission of by-laws for that purpose.

The amendment made by section 6 will be found at the end of section 257 of The Municipal Act.

Section 19, as amended by section 7 of The Power Commission Act, 1917, giving power to trustees of police villages to enter into contracts with the commission for the supply of power and the submission of by-laws for that purpose.

The amendment made by section 7 will be found after section 518 of The Municipal Act.

Section 19*a*, as enacted by section 8 of The Power Commission Act, 1917, which will be found set out in full at the end of this Act.

Section 24*a*, as enacted by section 9 of The Power Commission Act, 1917, providing that debentures for the extension or improvement of an electric light, heat or power system are not to be issued without the assent of the commission.

This section will be found set out in full after par. 3 of section 400 of The Municipal Act.

Section 20, giving municipal corporations entering into a contract with the commission all the powers conferred by The Public Utilities Act or The Municipal Act in respect to light and heat.

Sections 47 to 51, as enacted by section 15 of The Power Commission Act, 1915.

Section 47 will be found set out after subsection 5 of section 34 of this Act.

Section 48 provides that the members of any municipal commission are not to be interested or hold stock in companies generating or supplying electrical power.

Section 49 declares the right of municipal corporations to enter on lands for the purpose of placing overhead or underground wires without the consent of the owner.

Section 50 imposes upon a commission the obligations entered into by the municipal corporation which it represents.

Section 51 provides for the determination of disputes between a municipal corporation and the Power Commission and for the bringing of actions by the commission in respect of breaches of its contract with the commission.

1. This Act may be cited as *The Public Utilities Act.* 3-4 Geo. V. c. 41, s. 1.

Short title.

2. In Parts III., IV., V. and VI. of this Act, "Public Utility" or "Public Utilities" shall mean water, artificial or natural gas, electrical power or energy, steam and hot water. 3-4 Geo. V. c. 41, s. 2.

Interpretation. "Public Utilities."

PART I.

MUNICIPAL WATERWORKS.

3.—(1) The corporation of a local municipality may, under and subject to the provisions of this Part, acquire, establish, maintain and operate waterworks, and may acquire by purchase or otherwise and may enter on and expropriate land, waters and water privileges and the right to divert any lake, river, pond, spring or stream of water, within or without the municipality, as may be deemed necessary for waterworks purposes, or for protecting the waterworks or preserving the purity of the water supply.

Establishment of works and expropriation of land, etc.

(2) No land, water or water privilege which is not situate within or within 15 miles of the municipality shall be expropriated under

Limitation of power to expropriate.

the powers conferred by subsection 1, and no water shall be taken from any lake or river except within or within 15 miles of the municipality, or in either case so as to interfere with the waterworks of any other municipal corporation or the supply of water therefor then in actual use.

Power to acquire existing works.

(3) The corporation may purchase the waterworks of any person situate within or in the neighbourhood of the municipality and may improve and extend the same, and, for the purpose of any improvement or extension, may exercise all the powers conferred by this Part. 3-4 Geo. V. c. 41, s. 3.

Provision as to paying compensation. Rev. Stat. c. 192.

4. The provisions of Part 15 of *The Municipal Act* shall apply to the exercise by the corporation of any of the powers conferred by this Part. 3-4 Geo. V. c. 41, s. 4.

Construction of necessary works.

5.—(1) The corporation may construct and maintain, in and upon the land acquired by it, such reservoirs, water and other works, plant and machinery as may be requisite for the undertaking, and may, by pipes or otherwise, convey the water thereto and therefrom, in, upon, and through any land lying between the reservoirs and waterworks and the lake, river, pond, spring or stream of water from which the water is procured or between them, or any of them, and the municipality.

Power to enter on intermediate lands.

(2) The corporation and its servants may for such purposes enter and pass upon and over such intermediate land, and may, if necessary, cut and dig up the same and lay pipes through it, and in, upon, through, over, and under the highways, lanes and other public communications within the municipality, or within the distance limited by subsection 2 of section 3, and in, upon, through, over, and under the land of any person within the municipality.

Duty of restoration.

(3) All such highways, lanes, or other public communications, and all land, not being the property of the corporation, shall be restored to their original condition without unnecessary delay.

(4) The corporation may purchase or expropriate, use and occupy such part of such intermediate land as it may deem necessary for the making and maintaining of the works, or for the opening of new streets required for the same, or for the protection of the works, or for preserving the purity of the water supply, or for taking up, removing, altering or repairing the pipes, and for distributing water to the inhabitants of the municipality, or for the uses of the corporation, or of the owners or occupants of the land through or near which the pipes may pass. 3-4 Geo. V. c. 41, s. 5.

Power to expropriate.

6. For the purpose of distributing the water the corporation may sink and lay down pipes, tanks, reservoirs, and other conveniences, and may from time to time alter their location or construction as the corporation may deem advisable. 3-4 Geo. V. c. 41, s. 6.

Power to lay down pipes, etc.

7.—(1) The service pipes shall be laid down from the main pipe to the line of the highway by the corporation, and the corporation shall be responsible for keeping the same in repair.

Service pipes.

(2) Where a vacant space intervenes between the outer line of a highway and the wall of a building or other place into which the water is to be taken, the corporation may, with the consent of the owner, lay the service pipe across such vacant space to the interior face of the outer wall and charge the cost thereof to the owner of the premises, or the owner may himself lay the service pipe, if it is done to the satisfaction of the corporation.

Laying of, from line of street, to wall of building.

(3) The expense incidental to the laying and repairing of service pipes if laid or repaired by the corporation, except the repairing of the service pipes from the main pipe to the line of a highway, or of superintending the laying or repairing of the same, if laid or repaired by any other person, shall be payable by the owner to the corporation on demand, and if not so paid may be collected in the same manner as water rates.

Expenses of laying.

Expenses of superintending.

(4) The expense of superintending the laying or repairing of a service pipe shall not exceed one dollar. 3-4 Geo. V. c. 41, s. 7.

Service pipe to be under control of corporation.

8.—(1) The service pipes from the line of a highway to the interior face of the outer wall of the building supplied, together with all branches, couplings, stopcocks and apparatus placed therein by the corporation shall be under its control, and if any damage is done to that portion of the service pipe or its fittings the owner or occupant of the building shall forthwith repair the same to the satisfaction of the corporation, and, in default of his so doing, whether notified or not, the corporation may enter upon the land where the service pipe is and repair the same, and charge the cost thereof to the owner or occupant of the premises, and the same may be collected in the same manner as water rates.

Prohibition as to using stopcock.

(2) The stopcock placed by the corporation inside the wall of the building shall not be used by the water taker, except in case of accident, or for the protection of the building or the pipe and to prevent the flooding of the premises.

Approval of taps by corporation.

(3) Persons supplied with water by the corporation may be required to place only such taps for drawing and shutting off the water as are approved of by the corporation. 3-4 Geo. V. c. 41, s. 8.

Regulation of use of water and of rates.

9. The corporation may regulate the distribution and use of the water in all places where and for all purposes for which it may be required, and fix the prices for the use thereof, and the times of payment, and may erect such number of public hydrants and in such places as it may see fit, and may direct in what manner and for what purposes the same shall be used, and may fix the rate or rent to be paid for the use of the water by hydrants, fireplugs, and public buildings. 3-4 Geo. V. c. 41, s. 9.

Rates at which water to be supplied to provincial institutions.

10.—(1) The corporation of every municipality having a system of waterworks shall supply water at all times to all public institutions situate therein and belonging to or maintained by the

Province at such rents, rates or prices as may be fixed by by-law of the corporation, but not exceeding those charged to manufacturers.

Penalty.

(2) For every contravention of subsection 1, the corporation shall incur a penalty not exceeding $500, recoverable by action at the suit of the Crown. 3-4 Geo. V. c. 41, s. 10.

Non-liability for breakage or stoppage.

11. The corporation shall not be liable for damages caused by the breaking of any service pipe or attachment, or for shutting off of water to repair or to tap mains, if reasonable notice of the intention to shut off the water is given. 3-4 Geo. V. c. 41, s. 11.

Power to supply water outside of municipality.

12. The corporation may supply water upon special terms and for such term of years as may be agreed on to owners or occupants of land beyond the limits of the municipality, and may exercise all other powers necessary for carrying out any agreement for that purpose, and may also make any agreement which may be deemed expedient for the supply of water for any term not exceeding five years to any railway company, or manufactory, or to builders; but where water is to be supplied for any of the purposes mentioned in this section in another municipality, the corporation of which possesses waterworks, no pipes for that purpose shall be carried in, upon, through, over or under any highway, lane, or public communication within such other municipality without the consent of the council thereof. 3-4 Geo. V. c. 41, s. 12.

Proviso.

Power to regulate supply and to prohibit wrongful use of water.

13. The corporation may pass by-laws for regulating the time, manner, extent and nature of the supply by the works, the building or persons to which and to whom the water shall be furnished, the price to be paid therefor, and every other matter or thing related to or connected therewith which it may be necessary or proper to regulate, in order to secure to the inhabitants of the municipality a continued and abundant supply of pure and wholesome water, and to prevent the practising of frauds upon the corporation with regard to the water so supplied, and for providing that for a contravention of any such by-law the offender shall incur a penalty not exceeding $20 or may be imprisoned without the option of a fine for any period not exceeding one month, and the provisions of *The Ontario Summary Convictions Act* shall apply to a prosecution under this section. 3-4 Geo. V. c. 41, s. 13.

Rev. Stat. c. 90.

Prohibitions and penalties.

14. Every person who

(*a*) Wilfully hinders or interrupts, or causes or procures to be hindered or interrupted the corporation, or any of its officers, contractors, agents, servants or workmen, in the exercise of any of the powers conferred by this Act;

(*b*) Wilfully lets off or discharges water so that the same runs waste or useless out of the works;

(*c*) Being a tenant, occupant, or inmate of any house, building or other place supplied with water from the waterworks, lends, sells, or disposes of the water, gives it away, permits it to be taken or carried away, uses or applies it to the use or benefit of another, or to any use and benefit other than his own, increases the supply of water agreed for, or improperly wastes the water;

(*d*) Without lawful authority wilfully opens or closes any hydrant, or obstructs the free access to any hydrant, stopcock, chamber, pipe, or hydrant-chamber, by placing on it any building material, rubbish, or other obstruction;

(*e*) Throws or deposits any injurious, noisome or offensive matter into the water or waterworks, or upon the ice, if the water is frozen, or in any way fouls the water or commits any wilful damage, or injury to the works, pipes, or water, or encourages the same to be done;

(*f*) Wilfully alters any meter placed upon any service pipe or connected therewith, within or without any building or other place, so as to lessen or alter the amount of water registered;

(*g*) Lays or causes to be laid any pipe or main to communicate with any pipe or main of the waterworks, or in any way obtains or uses the water without the consent of the corporation; or

(*h*) Washes or cleanses cloth, wool, leather, skin or animals, or places any noisome or offensive thing, or conveys casts, throws, or puts any filth, dirt, dead carcase or other noisome or offensive thing in any lake, river, pond, creek, spring, source or fountain, within the distance of one mile in the case of a town or village, or within three miles in the case of a city from the source of supply for such waterworks, or causes, permits, or suffers the water of any sink, sewer or drain to run or be conveyed into the same, or causes any other thing to be done whereby the water therein may be in any way tainted or fouled;

shall for every such offence incur a penalty not exceeding $20 or may be imprisoned, without the option of a fine, for any term not exceeding one month, and the provisions of *The Ontario Summary Convictions Act* shall apply to a prosecution under this section. 3-4 Geo. V. c. 41. s. 14.

Rev. Stat. c. 90.

Power to levy special rate.

15.—(1) For the purpose of assisting in the payment of any debentures issued for waterworks purposes, and the interest thereon, the corporation may impose a special tax in each year, during the currency of the debentures, not exceeding four mills in the dollar according to the assessed value thereof, upon the land fronting or abutting upon any highway, lane or other public communication in, through or along which the waterworks mains are laid, as well as all other land distant not more than 300 feet therefrom, which enjoys the advantage of the use of the water for the purpose of protection against fire, whether or not the owners or occupants thereof use the water for general purposes.

Power to remit special tax.

(2) The collector of taxes, upon the production by an owner or occupant using the water of the receipt for the payment of

the rate or rent chargeable for the use thereof during the year, or such proportion thereof as equals such special tax, shall remit or allow to such owner or occupant the amount so paid as a payment of or on account of such special tax. 3-4 Geo. V. c. 41, s. 15.

Construction of mains, etc., for benefit of individuals.

16. If one or more property owners within a municipality applies to the council for the construction of water mains and other works necessary to connect their properties with the waterworks system of the corporation the council may by by-law provide for the extension of the mains and pipes, and for all other works necessary to make such connection, and for permitting the applicants to receive the benefit of such waterworks upon such terms as the council may deem just; and the by-law may further provide that the cost of the work shall be charged as an annual special rate upon the land of the applicants, designated in the application, and such rate shall be payable, whether or not the applicants or the owners, for the time being, of the lands continue to use the water. 3-4 Geo. V. c. 41, s. 16.

PART II.

MUNICIPAL PUBLIC UTILITY WORKS OTHER THAN WATERWORKS.

Interpretation.

17. In this Part,

"Public Utility."

"Public Utility" shall mean artificial and natural gas, electrical power or energy, steam and hot water. 3-4 Geo. V. c. 41, s. 17.

Powers of corporations to produce and supply public utilities.

18.—(1) The corporation of every urban municipality may manufacture, procure, produce and supply for its own use and the use of the inhabitants of the municipality any public utility for any purpose for which the same may be used; and for such purposes may purchase, construct, improve, extend, maintain, and operate any works which may be deemed requisite, and may acquire any patent or other right for the manufacture or production of such public utility, and may also purchase, supply, sell or lease fittings, machines, apparatus, meters, or other things for any of such purposes.

(2) The corporation may sell and dispose of coke, tar, and every other by-product or residuum obtained in or from its works, and any surplus coal it may have on hand.

May sell coke, etc.

(3) The corporation may purchase or rent such land and buildings as may be deemed necessary for the purpose of its undertaking. 3-4 Geo. V. c. 41, s. 18.

May rent or purchase lands.

19. The corporation may acquire by purchase, lease or otherwise, or may expropriate any land in the municipality which may be required for its works or any extension thereof, and the provisions of Part 15 of *The Municipal Act* shall apply to the exercise by the corporation of the power to expropriate and of the power conferred by section 22. 3-4 Geo. V. c. 41, s. 19; 4 Geo. V. c. 2, sched. (34).

Power to expropriate lands for works.

Rev. Stat. c. 192.

20. The corporation, for the purpose of laying down, taking up, examining, and keeping in repair the pipes, wires and rods used for the purpose of its undertaking, may break up, dig, and trench in, upon, and under the highways, lanes, and other public communications, or, with the consent of the owner, in, upon and under any private property; or may, upon poles or otherwise, conduct such wires and rods along, over and across such highways, lanes, and other public communications, or, with the consent of the owner, upon private property. 3-4 Geo. V. c. 41, s. 20.

Corporation may break up streets, etc.

21.—(1) The corporation may carry pipes, wires or rods, to any part of any building within the municipality parts of which belong to different owners, or are in possession of different tenants or occupants, passing over the property of any owner, or of any tenant or occupant, to convey the public utility to the part of the building to which it is to be conveyed.

Corporation may carry pipes, wires and rods through parts of buildings to supply other parts.

(2) Such pipes, wires or rods shall be carried up and attached to the outside of the building unless consent is obtained to carry the same in the inside. 3-4 Geo. V. c. 41, s. 21.

Method.

May also break up passages common to neighbouring proprietors.

22. The corporation may also break up and uplift all passages common to neighbouring owners, tenants, or occupants, and dig or cut trenches therein, for the purpose of laying down pipes, wires, or rods, or taking up, examining or repairing the same, doing as little damage as may be in the execution of the powers hereby conferred, and restoring such passages to their original condition without unnecessary delay. 3-4 Geo. V. c. 41, s. 22.

Contracts for supply of public utility for ten years.

23. The corporation may, from time to time and upon such terms as may be deemed advisable, enter into contracts for the supply of a public utility to any person for any period not exceeding ten years. 3-4 Geo. V. c. 41, s. 23.

Power to carry works into adjoining municipalities.

24. A corporation possessing or intending to construct works under this Act may, under the authority of a by-law of an adjoining local municipality, exercise the like powers within the adjoining municipality as it may exercise within its own municipality upon such terms and conditions as may be agreed upon. 3-4 Geo. V. c. 41, s. 24.

PART III.

ALL MUNICIPAL PUBLIC UTILITIES.

Application of Part.

25. This Part shall apply to all municipal corporations owning or operating public utilities. 3-4 Geo. V. c. 41, s. 25.

Power to make by-laws for maintenance and management of works.

26.—(1) The council may pass by-laws for the maintenance and management of the works and the conduct of the officers and others employed in connection with them, and for the collection of the rates or charges for supplying the public utility, and for the rent of fittings, machines, apparatus, meters or other things leased to consumers, and for fixing such rates, charges and rents, and the times and places when and where the same shall be payable; and for allowing for prepayment or punctual payment such discount as may be deemed expedient.

(2) In fixing the rents, rates or prices to be paid for the supply of a public utility the corporation may use its discretion as to the rents, rates or prices to be charged to the various classes of consumers and also as to the rents, rates or prices at which a public utility shall be supplied for the different purposes for which it may be supplied or required.

Discretion of corporation as to rates to be charged.

(3) In default of payment the corporation may shut off the supply but the rents or rates in default shall, nevertheless, be recoverable. 3-4 Geo. V. c. 41, s. 26.

Power to shut off supply.

27. The sum payable by the owner or occupant of any building or lot for the public utility supplied to him there, or for the use thereof, and all rents, rates, costs and charges by this Act to be collected in the same manner as rents or rates for the supply of a public utility, shall be a lien and charge on the building or lot and may be levied and collected in like manner as municipal rates and taxes are recoverable. 3-4 Geo. V. c. 41, s. 27.

Rates to be lien on lot or building.

28. The officers of the corporation, when acting in the discharge of their duties under this Act, shall *ex-officio* be constables. 3-4 Geo. V. c. 41, s. 28.

Protection and powers of officers.

29. No action shall be brought against any person for any thing done in pursuance of this Act, but within six months next after the act committed, or in case there is a continuation of damage, within one year after the original cause of action arose. 3-4 Geo. V. c. 41, s. 29.

Limitation of actions.

30. Materials procured under contract with the corporation, and upon which the corporation has made advances in accordance with such contract, shall be exempt from execution against the person who supplied or contracted to supply such materials. 3-4 Geo. V. c. 41, s. 30.

Property exempt from execution.

31. The public utility works, and the land acquired for the purpose thereof and the property appertaining therto, shall be

Money borrowed to be a charge on works.

specially charged with the repayment of any sum borrowed by the corporation for the purposes thereof, and for any debentures issued therefor, and the holders of such debentures shall have a preferential charge on such works, land and property for securing the payment of the debentures and the interest thereon. 3-4 Geo. V. c. 41, s. 31.

Application of revenue.

32. Subject to the provisions of section 39 of *The Power Commission Act*, and notwithstanding anything in *The Municipal Act* contained, revenues arising from supplying any public utility or from the property connected with any public utility work, after providing for the expenses and maintenance of the works, shall be paid over to the treasurer of the municipality to be applied annually to the reduction or extinguishment of the rates required to be levied under any by-law for the issue of debentures of the municipality for the construction, extension or improvement of the works, and it shall not be necessary to levy any general rate to provide for sinking fund and interest or other payments on account of such debentures, except to the extent to which the revenues on hand are insufficient to meet the annual payments falling due on account of principal and interest of the debentures. 7 Geo. V. c. 47, s. 1.

Power to sell any property when no longer required.

33.—(1) The corporation may sell, lease or otherwise dispose of any property which is no longer required for the purpose of the undertaking, and any property so sold shall be free from any charge or lien on account of any debentures issued by the corporation, but the proceeds of the sale shall be added to and form part of the fund for the redemption and payment of any debentures constituting a charge thereon, or if there are no such debentures the proceeds shall form part of the general funds of the corporation.

Power to take security.

(2) If credit is given for any part of the purchase money of real property the corporation may take security by way of mortgage to secure the same, and every such mortgage and the pro-

ceeds thereof shall stand as security for any debentures constituting a charge on the real property at the time of the sale. 3-4 Geo. V. c. 41, s. 33.

PUBLIC UTILITY COMMISSION.

34—(1). Subject to the provisions of subsections 1*a* to 1*e*, the council of a municipal corporation which owns or operates works for the production, manufacture or supply of any public utility or is about to establish such works, and the council of a township corporation which has entered into a contract with the Hydro-Electric Power Commission of Ontario for a supply of electrical power or energy in the township, may, by by-law passed with the assent of the municipal electors, provide for entrusting the construction of the works and the control and management of the same to a commission to be called "The Public Utilities Commission of the (*naming the municipality*)," or in the case of such township, "The Hydro-Electric Commission of the Township of (*naming the township*)," or to a commission established under this Part.

Formation of Public Utility Commission for management of works.

(1*a*) Where the corporation of a village has entered into a contract with the Hydro-Electric Power Commission of Ontario, under *The Power Commission Act*, for a supply of electrical power or energy a commission may be established by by-law of the council under the provisions of this Part for the control and management of the construction, operation and maintenance of all works undertaken by the corporation for the distribution and supply of such electrical power or energy, and it shall not be necessary that such by-law receive the assent of the electors.

Application of revenue from public utility.

(1*b*) Every such commission heretofore established by the council of a village shall be deemed to have been lawfully established, and the by-law establishing such commission shall be deemed to be and to have been legal, valid and binding from the time of the passing thereof, notwithstanding that such by-law was passed and

Establishment of municipal commission.

such commission was established without the assent of the electors first having been obtained.

Appointment of commission for village.

(1*c*) A by-law passed by the council of a village for the establishment of a commission without the assent of the electors may be repealed by the council at any time and it shall not be necessary to obtain the assent of the electors to such repeal.

Rev. Stat. c. 39.

Village commissions heretofore established.

Assent of electors.

(1*d*) Where a by-law establishing a commission in a village has been passed with the assent of the electors the by-law may be repealed with the like assent.

Repeal of village by-law establishing commission.

(1*e*) Upon the repeal of a by-law establishing a commission under this section, the control and management of the works shall be vested in the council and the commission shall cease to exist. 7 Geo. V. c. 47, s. 2.

R.S.O. 1897. cc. 234, 235.

(2) A commission established under *The Municipal Waterworks Act*, or *The Municipal Light and Heat Act*, or under a special Act for the construction or the control and management of works for the manufacture, production or supply of any public utility shall, for the purposes of this section, be deemed to be a Commission established under this Part and the provisions of this Part shall apply to it.

One commission for several public utilities.

(3) Where a commission has been established under this Part as to any public utility and the corporation desires to entrust the control and management of any other public utility works to a commission, subject to subsection 5, such control and management shall be entrusted to the commission so established, or if there is more than one commission so established to one of them, or the by-law may provide for placing under the control and management of one commission all public utility works owned by the corporation.

Name.

(4) Where the construction of any other public utility works and the control and management of them is entrusted to any of the commissions mentioned in subsection 2, such commission

thereafter shall be called "The Public Utility Commission of the (*naming the municipality*)."

Special provisions as to Hydro-Electric Commission.

(5) Where the corporation of a city or town has entered into a contract with The Hydro-Electric Power Commission of Ontario for the supply of electrical power or energy a commission shall be established under the provisions of this Part for the control and management of the construction, operation and maintenance of all works undertaken by the corporation for the distribution and supply of such electrical power or energy and for the purposes of this subsection it shall not be necessary that the by-law receive the assent of the electors; or such control and management shall be entrusted to an existing Public Utilities Commission, and, where the commission is not entrusted with the control and management of any other public utility, it shall be called "The Hydro-Electric Commission of the (*naming the municipality*)."

Section 47 of The Power Commission Act, as enacted by 5 Geo. V. c. 19, s. 15, provides as follows:—

47.—(1) Notwithstanding anything in any general or special Act contained, in and for the year 1916 and thereafter subsection 5 of section 34 of *The Public Utilities Act* shall apply in every city and town which has entered into a contract with the commission for the supply of electrical power or energy, and a commission shall be established under the provisions of Part III. of *The Public Utilities Act* for the control and management of the construction, operation and maintenance of all works undertaken by the corporation for the distribution and supply of electrical power or energy.

(2) In a city having a population of 100,000 or over, according to the last enumeration of the assessor, the corporation of which has entered into a contract with the commission under this Act, the commission to be established for the control and management of the construction, operation and maintenance of all works undertaken by the corporation for the distribution and supply of electrical power or energy, may, if the council of the city by by-law so declares, consist of three members, one of whom shall be appointed by the municipal council of the city at its first meeting in each year, one shall be appointed by the commission and the third of whom shall be the mayor of the city, and the members so appointed shall hold office for two years or until their successors are appointed.

Special Act not affected.

(6) Subsection 5 shall be subject to the provisions of any special Act providing for the control and management of such works.

Certain by-laws not to be repealed.

(7) A by-law of the council, for the purposes mentioned in subsection 4, shall not be repealed without the consent of "The Hydro-Electric Power Commission of Ontario."

Provision for management of sewerage system. Rev. Stat. c. 192.

(8) If no commission has been established under this Part to which the control and management of a sewerage system, to which paragraph 11 of section 406 of *The Municipal Act* applies, may be entrusted a commission may be established, under this Part, for the control and management of such sewerage system, and the provisions of this Part shall apply to it. 3-4 Geo. V. c. 41, s. 34.

Powers of commission.

35.—(1) Subject to subsection 3, upon the election of the commissioners as hereinafter provided, all the powers, rights, authorities, and privileges which are by this Act conferred on the corporation shall, while such by-law remains in force, be exercised by the commission and not by the council of the corporation.

Officers of corporation to hold office.

(2) The officers and employees of the corporation shall be continued until removed by the commission unless their engagement sooner terminates.

Council to provide money required for works.

(3) Nothing contained in this section shall divest the council of its authority with reference to providing the money required for such works, and the treasurer of the municipality shall, upon the certificate of the commission, pay out any money so provided. 3-4 Geo. V. c. 41, s. 35.

Number of commissioners.

36.—(1) A commission established under this Part shall be a body corporate and shall consist of three or five members as may be provided by the by-law, of whom the head of the council shall *ex-officio* be one and the others shall be elected at the same time and place and in the same manner as the head of the council, and subject to subsection 2 the elected members shall hold office for two years and until their successors are elected and the new commission is organized.

Term of office.

(2) One-half of the first elected members shall hold office for two years and the other one-half for one year, and shall continue

in office until their successors are elected and the new commission is organized.

Term of office to be determined by lot.

(3) At the first meeting of the commission after the first election the members who are to hold office for two years shall be chosen by lot.

Provisions as to mode of election of, etc. Rev. Stat. c. 192.

(4) Except where otherwise expressly provided the provisions of Parts 2, 3 and 4 of *The Municipal Act* which are applicable to members of the council of a local municipality shall apply *mutatis mutandis* to the commissioners to be elected under the provisions of this Part. 3-4 Geo. V. c. 41, s. 36.

See Rex ex rel. Gardhouse v. Irwin, referred to in notes to s. 53 cl. (j) Municipal Act, ante p. 95.

Filling of vacancies.

37.—(1) Where a vacancy in the commission occurs from any cause the council shall immediately appoint a successor who shall hold office during the remainder of the term for which his predecessor was elected.

Quorum.

(2) A majority of the commissioners shall constitute a quorum of the commission. 3-4 Geo. V. c. 41, s. 37.

Salary of commissioners.

38.—(1) The salary, if any, of the commissioners shall from time to time be fixed by the council and no member of the council, except the head thereof, shall at the same time be a member of the commission. 3-4 Geo. V. c. 41, s. 38.

Salaries of municipal commissioners to be approved by commission.

(2) Where a commission is established which has the control and management of works constructed for the distribution of electrical power or energy supplied by the Hydro-Electric Power Commission of Ontario, the salary or other remuneration of the commissioners, so far as the same is chargeable to such works, shall be subject to the approval of the Hydro-Electric Power Commission of Ontario. 7 Geo. V. c. 47, s. 3.

Repeal of by-law.

39.—(1) The council may, by by-law passed with the assent of the municipal electors, repeal any by-law passed under section 34.

Apportionment of salaries.

(2) Where a by-law is repealed the council shall apportion the current year's salary of the commissioners, and any officer or

employee of the commission shall be continued until removed by the council unless his engagement sooner terminates. 3-4 Geo. V. c. 41, s. 39.

Book of accounts.

40.—(1) Separate books and accounts of the revenues derived from every public utility under its management shall be kept by the commission, and such books and accounts shall also be kept separate from the books and accounts relating to the other property, funds, or assets connected with such public utility, and such books and accounts shall be open to inspection by any person appointed for that purpose by the council. 3-4 Geo. V. c. 41, s. 40 (1).

Regulation of system of book-keeping. 7 Geo. V. c. 14.

(2) Subsection 1 shall be subject to section 10 of *The Bureau of Municipal Affairs Act.* 7 Geo. V. c. 14, s. 13.

Returns to council.

41.—(1) The commission shall, on or before the fifteenth day of January in each year, or upon such other day as the council may direct, cause a return to be made to the council containing a statement of the affairs of each public utility work showing

(*a*) The amount of the rents, issues, and profits, arising therefrom and the number of persons supplied with each of the public utilities during the previous calendar year;

(*b*) The extent and value of the property connected with each public utility work;

(*c*) The amount of all outstanding debentures and the interest thereon, due and unpaid, and the state of the sinking fund;

(*d*) The expenses of management, and all other expenses;

(*e*) The salaries of officers and servants;

(*f*) The cost of repairs, improvements and alterations;

(*g*) The price paid for any land acquired for the purpose of such public utility work and such a statement of revenue and expenditure as will at all times afford full and complete information of the state of its affairs.

(2) The commission shall also furnish such information as from time to time may be required by the council. Information for council.

(3) The accounts of the commission shall be audited by the auditors of the corporation, and the commission and its officers shall furnish to the auditors such information and assistance as may be in their power to enable the audit to be made. 3-4 Geo. V. c. 41, s. 41. Audit of accounts.

42. A book wherein shall be recorded all the proceedings of the commission shall be kept and shall be open to inspection by any person appointed for that purpose by the council. 3-4 Geo. V. c. 41, s. 42. Records of proceedings.

43. The revenues, after deducting disbursements, shall, quarterly or oftener if the council so directs, be paid over to the treasurer of the municipality, and shall be by him placed to the credit of the account of the public utility work, and if not required for the purpose of the work shall form part of the general funds of the corporation. 3-4 Geo. V. c. 41, s. 43. Revenues to be paid to municipal treasurer.

PART IV.

ALL MUNICIPAL AND COMPANY PUBLIC UTILITIES.

44. This Part shall apply to all municipal or other corporations owning or operating public utilities. 3-4 Geo. V. c. 41, s. 44. Application of Part.

45.—(1) Any person authorized by the corporation for that purpose shall have free access, at all reasonable times, and upon reasonable notice given and request made, to all parts of every building or other premises to which any public utility is supplied for the purpose of inspecting or repairing, or of altering or disconnecting any service pipe, wire or rod, within or without the building, or for placing meters upon any service pipe or connection within or without the building as he may deem expedient and for that purpose or for the purpose of protecting or regulating the use of such meter, may set it or alter the position of Inspection of premises.

it, or of any pipe, wire, rod, connection or tap, and may alter or disconnect any service pipe.

Prices for use of meters, etc.

(2) The corporation may fix the price to be paid for the use of such meter, and the times when and the manner in which the same shall be payable, and may also recover the expense of such alterations; and such price, and the expense of such alterations, may be collected in the same manner as rents or rates for the supply of a public utility.

Removal of fittings from premises of consumers.

(3) Where a consumer discontinues the use of the public utility, or the corporation lawfully refuses to continue any longer to supply it, the officers and servants of the corporation may, at all reasonable times, enter the premises in or upon which such consumer was supplied with the public utility [for the purpose of cutting off the supply of such utility or of making an inspection from time to time to determine whether such utility has been or is being unlawfully used or] for the purpose of removing therefrom any fittings, machines, apparatus, meters, pipes or other things being the property of the corporation in or upon such premises, and may remove the same therefrom, doing no unnecessary damage. 3-4 Geo. V. c. 41, s. 45; 7 Geo. V. c. 47, s. 4.

The words in brackets were added by 7 Geo. V. c. 47, s. 4.

Property of corporation exempt from distress.

46. No property of the corporation used for or in connection with the supply of any public utility shall be liable to be seized for rent due to the landlord of any land or building whereon or wherein the same may be or under execution against the owner or occupant of the land or building. 3-4 Geo. V. c. 41, s. 46.

Liability of persons doing damage.

47. Every person who, by act, default, neglect or omission occasions any loss, damage or injury to any public utility works or to any plant, machinery, fitting or appurtenances thereof shall be liable to the corporation therefor. 3-4 Geo. V. c. 41, s. 47.

Penalty for wilful damage

48. Every person who wilfully or maliciously damages or causes or knowingly suffers to be damaged any meter, lamp, lustre, service pipe, conduit, wire, rod, or fitting belonging to the corporation, or wilfully impairs or knowingly suffers the same to be altered or impaired, so that the meter indicates less than the actual amount of the public utility which passes through it, shall incur a penalty, to the use of the corporation, for every such offence, of not less than $4 or more than $20, and shall also be liable for the expenses of repairing or replacing such meter, lamp, lustre, service pipe, conduit, wire, rod or fitting and double the value of the surplus public utility so consumed, all of which, including the penalty, shall be recoverable under *The Ontario Summary Convictions Act*. 3-4 Geo. V. c. 41, s. 48.

of meters, lamps, etc.

Rev. Stat. c. 90.

49. Every person who wilfully extinguishes any public lamp or light, or wilfully removes, destroys, damages, fraudulently alters or in any way injures any pipe, conduit, wire, rod, pedestal, post, plug, lamp or other apparatus or thing belonging to the corporation shall incur a penalty, to the use of the corporation, of not less than $4 or more than $20, and shall also be liable for all damages occasioned thereby, all of which shall be recoverable under *The Ontario Summary Convictions Act*. 3-4 Geo. V. c. 41, s. 49.

Penalty for injuring public utility works.

50. Where there is a sufficient supply of the public utility the corporation shall supply all buildings within the municipality situate upon land lying along the line of any supply pipe, wire or rod, upon the request in writing of the owner, occupant or other person in charge of any such building. 3-4 Geo. V. c. 41, s. 50.

Corporation constructing works to supply buildings on line of supply, on request.

51.—(1) Main pipes or conduits for carrying or conveying any public utility underground in any highway, lane or public communication shall not be laid down therein by a municipal corporation or company within the distance of 6 feet of the main pipes or conduits for carrying or conveying any public utility underground of any person without the consent of such person, or the authority of "The Ontario Railway and Municipal Board."

Prohibition as to laying main pipes and conduits within 6 feet of existing ones.

(2) The Board, upon the application of the corporation or company, and after notice to such person and hearing any objections

Power of Municipal Board as to granting

Leave to lay pipes, etc., within less than 6 feet.

which may be made, may authorize the main pipes or conduits to be laid down within such distance less than six feet as may be deemed proper, and all main pipes and conduits laid down in accordance with such authority shall be deemed to have been laid down under statutory authority and to be lawfully laid down, and may be maintained and operated by the corporation or company without its incurring any liability to such person in respect of the construction, maintenance or operation of them, except that provided for by subsection 5, any general or special statute or law to the contrary notwithstanding.

Conditions.

(3) Such authority may be granted subject to such conditions as the Board may deem necessary to prevent injury to the main pipes or conduits of such person, or to such person, his servants and workmen, in maintaining, repairing and operating them.

Exercise of powers.

(4) The powers conferred by this section may be exercised from time to time as occasion may require.

Compensation for damages.

(5) If any damage or injury is done to the main pipes or conduits of such person, or is occasioned in the maintenance of them, by reason of the main pipes or conduits of the corporation or company being laid down at a less distance than six feet from the main pipes or conduits of such person, no action shall lie in respect thereof, but the corporation or company doing such damage or injury shall make due compensation therefor, and any question or dispute as to such damage or injury having been so done or occasioned, or as to the amount of compensation, shall be determined by arbitration, and the provisions of *The Municipal Act* shall apply *mutatis mutandis*.

Rev. Stat. c. 192.

Claim for damages.

(6) The person claiming damages shall, within one month after the expiration of any calendar year in which he claims that any such damage or injury has been so done or occasioned, give notice in writing to the corporation of his claim and the particulars thereof, and upon failure to do so the right to compensation in respect of the damage or injury done or occasioned during that calendar year shall be forever barred. 3-4 Geo. V. c. 41, s. 51.

52. Except where otherwise expressly provided all penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act.* 3-4 Geo. V. c. 41, s. 52.

Recovery of penalties.

Rev. Stat. c. 90.

PART V.

ALL COMPANY PUBLIC UTILITIES.

53. This Part shall apply to every company heretofore or hereafter incorporated for the purpose of supplying any public utility. 3-4 Geo. V. c. 41, s. 53.

Application of Part.

54.—(1) The company shall not exercise any of its powers within a municipality unless and until a by-law of the council of the municipality has been passed with the assent of the municipal electors where such assent is required by *The Municipal Franchises Act* authorizing the company to exercise the same and the company when so authorized may exercise any of the powers of expropriation conferred on a municipal corporation by Parts 1 and 2, if the power to expropriate is conferred on it by the letters patent incorporating the company or by supplementary letters patent.

Conditions precedent to company carrying on business or expropriating land.

Rev. Stat. c. 197.

(2) Subject to subsection 1 a company may conduct any of its pipes or carry any of its works through the land of any person lying within ten miles of the municipality for supplying which the company was incorporated.

Power to carry pipes through land within 10 miles of municipality.

(3) The powers of expropriation conferred on a company shall be exercised under and in accordance with the provisions of *The Ontario Railway Act.* 3-4 Geo. V. c. 41, s. 54.

Rev. Stat. c. 185.

55. A company, before supplying any public utility to any building or premises or as a condition of its continuing to supply the same, may require any consumer to give reasonable security for the payment of the proper charges of the company therefor, or for carrying the public utility into such building. 3-4 Geo. V. c. 41, s. 55.

Power to take security from consumer.

Remedy for price of public utility furnished.

56. If any person supplied with any public utility neglects to pay the rent, rate or charge due to the company at any of the times fixed for the payment thereof, the company, or any person acting under its authority, on giving forty-eight hours' previous notice, may stop the supply from entering the premises of such person by cutting off the service pipes, or by such other means as the company or its officers may deem proper, and the company may recover the rent or charge due up to that time, together with the expenses of cutting off the supply, notwithstanding any contract to furnish it for a longer time. 3-4 Geo. V. c. 41, s. 56.

Charges by exporting gas companies.

57. Where a natural gas company or natural gas transmitting company produces or transmit gas for export the price or charge at which the same shall be supplied shall be subject to regulation by the Lieutenant-Governor in Council. 3-4 Geo. V. c. 41, s. 57.

General powers.

58. The provisions of sections 6, 7 and 8, except as to the manner of recovering charges and expenses, sections 10, 11 and 12 as to making agreements for a supply of water to a railway company, manufactory or builder, and sections 14, 17, 18, 20, 21, 22 and 23 shall, *mutatis mutandis*, apply to a company. 3-4 Geo. V. c. 41, s. 58.

PART VI.

ACQUIRING WORKS FROM COMPANIES.

Municipalities may acquire works of company on payment therefor.

59.—(1) Where a by-law of the council of an urban municipality is passed with the assent of the electors entitled to vote on money by-laws declaring that it is expedient to acquire the works of a company, incorporated on or after the 10th day of March, 1882, for the purpose of supplying within such municipality any public utility the corporation may take possession of the works of the company and all property used in connection therewith for the purposes of supplying such public utility, whether the works and property, or any of them, are within or without the municipality, and shall pay therefor at a valuation to be determined by arbitration under *The Municipal Act*, subject to the provisions hereinafter mentioned.

Rev. Stat. c. 192.

Mode of computing value.

(2) The arbitrators, in determining the amount to be paid for such works and property, shall first determine the actual value thereof, having regard to what the same would cost if the works should be then constructed, or the property then bought, making due allowance for deterioration, wear and tear, and all other proper allowances, and shall increase the amount so ascertained by ten per centum thereof, which increased sum the arbitrators shall award as the amount to be paid by the corporation to the company, with interest from the date of their award.

Time within which amount to be paid.

(3) The amount shall be paid within six months from the date of the award, and the council shall take all requisite steps for providing the amount; and it shall not be necessary that a by-law passed for borrowing the amount shall receive the assent of the electors.

Council may take proceedings to determine value without first obtaining assent of electors.

(4) The council may, without submitting the question to the vote of the electors, take the proceedings authorized by subsection 1 for determining the amount to be paid for such works and property, upon notice to the company that the corporation intends to acquire the works and property by arbitration, under the provisions of this Act; but in such case any by-law for raising money to pay therefor shall require the assent of the electors and until the by-law is finally passed, the corporation shall not, unless with the consent of the company, take possession of the works or property; and in the event of the by-law not being passed the corporation shall indemnify the company for all costs it has been put to in and about the arbitration.

Amount may be settled by agreement.

(5) The council and the company may agree as to the amount to be paid for the works and property or any of them.

If amount not paid, rights of company to revive.

(6) If the amount awarded, or agreed to be paid, to the company is not paid within six months after the time at which it is payable the company may resume possession of its works and

property, and all its rights in respect thereof shall thereupon revive.

Existing companies may consent to be bound by above provisions.

(7) Any company incorporated before the 10th day of March, 1882, may, by by-law, declare that such company consents to be bound by the provisions of this section, and upon the passing of the by-law this section shall apply to the company.

Limitations as to by-laws.

(8) A by-law may be passed under subsection 1, with respect to a company incorporated before the 10th day of March, 1882, if an agreement has been made between the company and the corporation under which the corporation has the right at any time, or at any time after a date thereby fixed, not being later than ten years from the date of the agreement, to acquire the works of the company and all property used in connection therewith for such purposes, at a valuation to be determined by arbitration under *The Municipal Act*.

Rev. Stat. c. 192.

Certain rights not affected.

(9) Nothing in this section shall affect the right of a municipal corporation to acquire the works and property of any public utility company by agreement with the company, or any right of acquisition which has been or may be secured by any such corporation independently of the provisions of this section. 3-4 Geo. V. c. 41, s. 59.

TAKING STOCK, ETC., IN COMPANIES.

Power to subscribe for stock, etc.

60.—(1) Subject to the provisions of *The Municipal Act* the corporation of any municipality which has power to construct such works, and in which the public utility works of a company are situate, may subscribe for shares or take stock in the company or may loan money to it on mortgage or otherwise or guarantee payment of money borrowed by it.

When the head to be a director.

(2) The head of a municipality, the corporation of which holds stock in any such company to the extent of one-tenth or more of the whole of the capital stock, shall be *ex officio* a director of the company so long as the corporation continues to hold stock to that extent. 3-4 Geo. V. c. 41, s. 60.

PART VII.

COMMISSION FOR RAILWAYS AND TELEPHONES.

Commission to construct and manage railways and telephones.

61. The council of a municipal corporation, which owns or operates, or is about to establish any of the following works:—

(*a*) A railway, an electric railway, a street railway, or an incline railway;

(*b*) Telephone systems, or lines;

may, by by-law passed with the assent of the municipal electors, provide for entrusting the construction of the work and the control and management of it to a commission, to be called The Public Service Commission of the (*naming the municipality*) or to an existing Public Utilities Commission established under the authority of this Act; and if such a by-law is passed the provisions of sections 34 to 43 shall apply *mutatis mutandis* to the commission to which the construction, control and management of the work are entrusted and to the work. 3-4 Geo. V. c. 41, s. 61.

PART VIII.

MISCELLANEOUS.

Certain provisions of Rev. Stat. c. 39 not affected.

62. Nothing in this Act shall affect the provisions of section 38 or section 39 of *The Power Commission Act*, and they shall continue to apply to the cases to which they now apply. 3-4 Geo. V. c. 41, s. 62.

Prohibition of sale, etc., of gas containing sulphuretted hydrogen.

63.—(1) After the same have first been submitted to and approved of by the Lieutenant-Governor in Council by-laws may be passed by the councils of all municipalities to prohibit the sale or distribution within the municipality of natural or manufactured gas containing sulphuretted hydrogen.

Forfeiture of franchise for contravention of by-law.

(2) If a company contravenes the provisions of any such by-law or after the passing of such by-law neglects or refuses to furnish a supply sufficient for all public and private uses of gas not containing sulphuretted hydrogen any right, privilege or franchise

which it possesses for the sale or distribution of natural or manufactured gas within the municipality shall *ipso facto* come to an end and be determined.

Application to Ontario Railway and Municipal Board for declaration as to contravention.

(3) The corporation may apply to the Ontario Railway and Municipal Board for a declaration that the company has contravened the provisions of the by-law, or that, after the passing of such by-law, it has neglected or refused to supply gas not containing sulphuretted hydrogen, as provided by subsection 2, and the Board on proof to its satisfaction that the company has done so may make the declaration, and the fact of such contravention or neglect or refusal shall be thereby conclusively established.

Right of action to restrain sale, etc.

(4) After the passing of such by-law the corporation shall also have the right to bring and maintain an action to restrain the sale or distribution within the municipality of natural or manufactured gas containing sulphuretted hydrogen.

Removal of mains, pipes, etc.

(5) Upon application by a municipal corporation to the Ontario Railway and Municipal Board and upon proof of the sale or distribution of natural or manufactured gas containing sulphuretted hydrogen within such municipality after the passing of a by-law prohibiting the same, an order shall be made for the removal by the company so selling or distributing, of its conduits, mains, pipes and works from such municipality, but not including those used only for the purpose of transportation through the municipality to another municipality, and in default of such removal within the time limited by such order then for the removal thereof by the corporation at the expense of the company.

Restoration of condition of highways.

(6) Upon such removal such company shall restore the highways to as good a condition as they were in prior to such removal and in default thereof within the time limited by the order of the Board, the corporation may do so at the expense of the company, and the expense incurred by the corporation in such removal and restoration shall be recoverable in any Court of competent jurisdiction.

Application of section.

(7) This section shall apply to every company incorporated before or after the passing of this section and whether by special Act or under the provisions of any general Act.

No action for forfeiture of franchise.

(8) No action shall lie or be maintainable by a company against any municipal corporation for or by reason or on account of the forfeiture under the provisions of this section of any right, privilege or franchise of the company in the municipality. 4 Geo. V. c. 35.

Section 6 of Chapter 37 of the Statutes of Ontario, 1915, provides that—

Any Public Utility Commission having the management and control of a public utility as defined by *The Public Utilities Act* may make grants in aid of any of the purposes set out in section 1. Such grants may be made out of any funds under the control of the Commission.

The purposes set out in section 1 will be found on reference to that Act, which is printed *infra*.

Section 19*a* of The Power Commission Act, as enacted by section 8 of The Power Commission Act, 1917, provides as follows:—

19*a*.—(1) Notwithstanding anything in *The Public Utilities Act* or any other Act contained, the council of a township may pass by-laws:—

(*a*) For acquiring lands and real and personal property, and erecting, constructing and operating works for the development, transmission and distribution of electrical power or energy in the municipality;

(*b*) For entering into a contract with the commission with the assent of the municipal electors of the township qualified to vote on money by-laws, for the supply of electrical power or energy for the use of the municipality and the inhabitants thereof;

(*c*) For exercising for the said purposes, any of the powers which may be exercised by the municipal council of a town under the authority of *The Municipal Act, The Local Improvement Act, The Public Utilities Act* or this Act.

(2) The council of a township may by by-law set apart a portion of the township as to which any of the by-laws passed under subsection 1 may have effect, and may submit the by-law for the establishment of such works, or for entering into such contract, to the municipal electors qualified to vote on money by-laws in the part of the township so set apart.

(3) Where the council has passed a by-law under subsection 2, the council may issue debentures for the purposes set out in subsection 1, and levy the special rate for the amounts required to be raised on account of sinking fund and interest for the payment of the said debentures, in the district so set apart.

(4) The council may appoint a commission for the purpose of the construction of the works and the control and management of the same for the district so set apart in the manner provided by section 34 of *The Public Utilities Act,* but the commissioners appointed shall be residents of such district and it shall not be necessary to obtain the assent of the electors to the establishment of the commission.

MUNICIPAL ELECTRIC CONTRACTS.

An Act respecting Contracts for the Supply of Electrical Power to Municipal Corporations.

R.S.O. c. 205.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Municipal Electric Contracts Act*. 3-4 Geo. V. c. 42, s. 1.

Consent of electors required for contracts or franchises for supply, etc., of electrical power.

2. No municipal corporation shall enter into or renew any contract for the supply of electrical power or energy to the corporation or to the inhabitants thereof, or grant any franchise or any renewal of a franchise for the supply and distribution of electrical power or energy within the municipality, until a by-law setting forth the terms and conditions of such contract or franchise has been first submitted to, and has received the assent of, the municipal electors in the manner provided by *The Municipal Act*. 3-4 Geo. V. c. 42, s. 2.

Rev. Stat. c. 192.

PATRIOTIC GRANTS.

An Act to authorize and confirm Grants by Municipal Corporations for Patriotic Purposes.

5 Geo. V. c. 37, as amended by 6 Geo. V. c. 40 and 7 Geo. V. c. 41.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1.—(1) Any municipal corporation may pass by-laws for granting aid to Objects which may be aided.

(*a*) The Canadian Patriotic Fund, established by an Act of the Dominion Parliament passed in the fifth year of the reign of His Majesty King George the Fifth, chaptered 8:

(*b*) The Canadian Red Cross Association. 5 Geo. V. c. 37, s. 1, cls. (*a-b*).

(*bb*) The British Red Cross Fund and The British Sailors' Relief Fund. 7 Geo. V. c. 41, s. 3.

(*c*) The Belgian Relief Fund.

(*d*) Any other fund established for providing hospital accommodation, medical or surgical care or other assistance of a like nature to persons who have suffered or may suffer by reason of the present war. 5 Geo. V. c. 37, s. 1, cls. (*c-d*).

(*e*) Provide military outfit and equipment for any battalion the members of which are enlisted for overseas service during the present war or for the members of any local body organized for the purpose of home defence and officially recognized by the Department of Militia and

Defence. 5 Geo. V. c. 37, s. 1, cl. (*e*); 7 Geo. V. c. 41, s. 1.

(*f*) Insure the lives for the benefit of parents, widows, children, sisters or brothers or any person acting *in loco parentis* of officers and men, residents of the municipality, who during the present war may be on active service with the naval and military forces of the British Empire and Great Britain's allies. 5 Geo. V. c. 37, s. 1, cl. (*f*); 7 Geo. V. c. 41, s. 2.

(*g*) Any fund established for the assistance in case of need of the wives, children and dependent relatives of officers and men, residents of the municipality, who during the present war may be on active service with the naval and military forces of the British Empire and Great Britain's allies.

(*h*) To purchase and forward supplies of food and clothing for distribution among those requiring assistance in Great Britain, France or Belgium. 5 Geo. V. c. 37, s. 1. cls. (*g-h*).

Buildings for barrack accommodation.

(*i*) Provide, furnish, equip and maintain, improve and alter buildings (other than armouries or drill sheds) to be used as quarters or barrack accommodation for officers and men, members of the Canadian Expeditionary Force, while in training in the municipality for active service during the present war with the naval or military forces of the British Empire and Great Britain's allies;

Recruits.

(*j*) Assist in obtaining recruits for the said Canadian Expeditionary Force;

Band instruments.

(*k*) Purchase musical instruments and musical equipment for any band of a battalion forming part of the said Canadian Expeditionary Force;

Machine guns.

(*l*) Provide machine guns for the said Canadian Expeditionary Force. 6 Geo. V. c. 40, s. 1, *part*.

(*m*) Any fund established for providing allowances to widows, children, widowed mothers, parents, persons acting *in loco parentis*, or dependents of officers and men, who were residents of the municipality six months prior to enlistment, and who have died or may die while on active service with the naval or military forces of the British Empire and Great Britain's allies, or while returning home thereafter. 7 Geo. V. c. 41, s. 4.

Fund for aiding widows, children, parents, dependents, etc.

(*n*) Provide for grants to officers and men who have returned from active service with the naval or military forces of the British Empire or Great Britain's allies and who were residents of the municipality for six months prior to enlistment. 7 Geo. V. c. 41, s. 5.

Grants to returned officers and men.

(2) Any municipal corporation may expend moneys for the following purposes:—

Expenditures for certain purposes.

(*a*) For the purchase of rifles, ammunition and horses;

(*b*) For the protection of any municipal property;

(*c*) For pay to soldiers for picket duty and for expenses incurred in connection with returned soldiers;

(*d*) For any other expenditures incurred by the municipality in carrying out the provisions of this Act and amendments thereto. 7 Geo. V. c. 41, s. 6.

1*a*.—(1) In this Act "rateable property" shall include assessment for real property, income and business or other assessment made under *The Assessment Act*, and the amount raised under the authority of this Act shall be raised, levied and collected upon all the rateable property in the municipality by a general rate, and except as to the exemptions from taxation set out in section 5 of *The Assessment Act*, no partial or total exemption from assessment or taxation, and no fixed assessment or other special provision or agreement shall apply to the assessment and collection of such rate, anything in any general or special Act, or in any

Rateable property—what to include.

Rev. Stat. c. 195.

municipal by-law or resolution, or in any contract, or other instrument, or in any order of The Ontario Railway and Municipal Board, or otherwise, to the contrary notwithstanding.

Deduction of debt in ascertaining limit of borrowing powers.

(2) In calculating the amount of the indebtedness of the municipality for the purpose of ascertaining if the limit of its borrowing power, as fixed by any general or special Act, has been reached, any debentures issued under the authority of this Act shall not be reckoned as part of such indebtedness, but shall be excluded in computing the same.

Limit fixed by Rev. Stat. c. 192, s. 297 not to apply.

(3) In calculating whether or not the limit fixed by section 297 of *The Municipal Act* has been reached, any rates levied under the authority of this Act shall be excluded in computing the same. 6 Geo. V. c. 40, s. 2.

Power to borrow money on debentures or promissory notes.

2.—(1) For the purposes mentioned in section 1 the municipal corporation may borrow money by the issue of debentures, payable in not more than twenty years from the date of issue, or on the security of promissory notes, or may provide for raising the money in the estimates and levy for the same in the taxes for the current year. 5 Geo. V. c. 37, s. 2 (1); 6 Geo. V. c. 40, s. 3.

How promissory notes to be paid.

(2) If the money is borrowed on promissory notes and the council decides to extend payment of any of them beyond one year, the notes shall be so drawn and made that the number and principal of the notes falling due in one year shall be equal to the number and principal of those falling due in each of the other years of the term fixed by the council, but so that none shall be for a longer period than five years from the date of the first. 5 Geo. V. c. 37, s. 2 (2).

Assent of electors not required.

3. It shall not be necessary to obtain the assent of the electors to any by-law passed under the authority of this Act, or to observe the formalities in relation thereto prescribed by *The Municipal Act.* 5 Geo. V. c. 37, s. 3.

Special rates.

4. A special rate shall be levied in each year on all the rateable property in the municipality sufficient to pay the instalments of principal and the interest falling due in respect of the debentures or to pay the interest and provide for a sinking fund to retire the debentures at their maturity, or to pay the principal and interest falling due on the promissory notes as the case may be. 5 Geo. V. c. 37, s. 4.

Confirmation of past grants.

5. Any by-law heretofore or hereafter passed for any of the purposes mentioned in section 1, may be approved by the Lieutenant-Governor in Council, and when so approved shall be legal, valid and binding. 5 Geo. V. c. 37, s. 5.

Grants by Public Utility Commission.

6. Any Public Utility Commission having the management and control of a public utility as defined by *The Public Utilities Act* may make grants in aid of any of the purposes set out in section 1. Such grants may be made out of any funds under the control of the Commission. 5 Geo. V. c. 37, s. 6.

7. (*This Section validates certain by-laws.*)

When moneys not liable to attachment.

8. Moneys appropriated by the council of any municipality under clauses (*f*) and (*g*) of section 1 of this Act shall not be liable to attachment. 7 Geo. V. c. 41, s. 7.

Section 1 (2) *of* 6 *Geo. V. c.* 40, *confirmed grants for purposes mentioned in the Act made prior to the passing of it and Section* 8 *of* 7 *Geo. V. c.* 41 *made its provisions retroactive to 4th of August, 1914, and confirmed grants made prior to the passing of it and section* 9 *of the same Act confirmed certain municipal by-laws.*

BUREAU OF MUNICIPAL AFFAIRS.

An Act to establish the Bureau of Municipal Affairs.

7 Geo. V. Chap. 14.

Assented to 12th April, 1917.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Bureau of Municipal Affairs Act.*

Interpretation.

2. In this Act,

"Bureau."

(*a*) "Bureau" shall mean The Bureau of Municipal Affairs established under the provisions of this Act.

"Director."

(*b*) "Director" shall mean the Director of the Bureau.

Establishment of Bureau.

3. There is hereby established a branch of the Public Service of Ontario to be known as "*The Bureau of Municipal Affairs.*"

Bureau to be attached to department.

4. The Bureau shall be attached to such one of the departments of the Public Service as may be designated by the Lieutenant-Governor in Council, and shall be under the direction and control of the Minister in charge of that department.

Director and officers.

5. The Lieutenant-Governor in Council may appoint an officer to be known as the Director of the Bureau of Municipal Affairs, and such engineers, inspectors, auditors, officers, clerks and servants as may be deemed advisable.

Director's rank.

6. The Director for the purposes of *The Public Service Act* and *The Audit Act* shall rank as the deputy head of a department and in respect to matters assigned to the Bureau shall exercise and perform the powers and duties of the deputy head of a department.

Rev. Stat. cc. 14, 23.

7. The Director, acting under the direction of the Minister, shall preside over the Bureau and shall perform such other duties as may be assigned to him by the Lieutenant-Governor in Council or by the Minister.

Director to preside over Bureau.

8. Wherever by any Act of this Legislature an officer engaged in the administration of the law relating to any of the matters assigned to the Bureau by this Act is directed to report to the Minister, the report shall, unless the Minister otherwise requires, be made to the Director, and every such officer shall act under and obey the directions of the Director.

Officers to report to director.

9.—(1) There shall be assigned to the Bureau the administration of *The Municipal and School Accounts Audit Act.*

Administration of Rev. Stat. c. 200.

(2) The Provincial Municipal Auditor shall be an officer of the Bureau.

Certain officers attached to Bureau.

(3) All returns required by any Act to be made to the Secretary of the Bureau of Industries by any municipal officer shall hereafter be made to the Director.

Returns to Bureau.

10.—(1) The Bureau shall superintend the system of bookkeeping and keeping accounts of the assets, liabilities, revenue and expenditure of all public utilities as defined by *The Public Utilities Act* which are operated by or under the control of a municipal corporation or a municipal commission, and may require from any such municipal corporation or commission such returns and statements as to the Bureau may seem proper, and may extract from such returns and statements such information as, in the opinion of the Bureau, may be useful for publication, and

Superintendence of bookkeeping, etc., of public utilities.

Rev. Stat. c. 204.

may embody such portions of such returns and statements in the annual report of the Bureau as to it may seem proper.

Penalties.

(2) A municipal corporation or commission which refuses or neglects to comply with the provisions of this section shall incur a penalty not exceeding one hundred dollars for every week it may be in default, recoverable under *The Ontario Summary Convictions Act*, and in addition the Bureau may authorize an auditor to secure such returns and statements at the expense of the municipal corporation or commission.

Rev. Stat. c. 90.

Section not to apply to electric power commission, etc.

(3) This section shall not apply to a public utility for the development or distribution of electrical power or energy operated or controlled by a municipal corporation or commission.

Duties of Bureau.

11. It shall be the duty of the Bureau to—

Bulletin.

(*a*) Issue from time to time and send to the clerk of every municipality bulletins dealing with the administration of each branch of municipal affairs in order to secure uniformity, efficiency and economy in such administration;

Statistics.

(*b*) Collect such statistical and other information respecting the affairs of municipal corporations in Ontario as may be deemed necessary or expedient from time to time;

Inquiry into laws in force in other countries.

(*c*) Enquire into, consider and report upon the operation of laws in force in other provinces of the Dominion and in Great Britain and in any foreign country having for their object the more efficient government and administration of the affairs of municipal corporations, and make such recommendations and suggestions thereon as may be deemed advisable;

Report on proposed changes in law.

(*d*) Consider and report when requested by the Minister upon any petition for or suggestion of a change in the laws of Ontario relating to the powers and duties of municipal corporations;

(*e*) Prepare and transmit to the Lieutenant-Governor in Council annually a report upon the work of the Bureau during the preceding year, together with such statistics and other information as may have been collected in the Bureau. Annual report.

(*f*) Perform such other duties as may from time to time be assigned to it by the Lieutenant-Governor in Council. Other duties.

12. Nothing in this Act shall affect any of the powers conferred by any Act on The Hydro-Electric Power Commission of Ontario, The Ontario Railway and Municipal Board, The Provincial Board of Health, or any functionary, body or officer, and if any matter affecting any of such powers comes to the Bureau it shall be transferred to the proper functionary, body or officer to be dealt with. Powers conferred on certain bodies and officers not affected.

13. Subsection 2 of section 40 of *The Public Utilities Act* is repealed and the following substituted therefor:— Rev. Stat. c. 204, s. 40 (2), repealed.

(2) Subsection 1 shall be subject to section 10 of *The Bureau of Municipal Affairs Act*.

PLANNING AND DEVELOPMENT.

An Act respecting Surveys and Plans of Land in or Near Urban Municipalities.

7 Geo. V. c. 44.

Assented to 12th April, 1917.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Planning and Development Act.*

Interpretation.

2. In this Act,

"Urban zone."

(*a*) "Urban Zone" shall mean

In the case of a city the area within five miles of said city, but exclusive of any part of another city;

In the case of a town the area within three miles of said town, but exclusive of any part of a city or other town;

In the case of a village the area within three miles of such village, exclusive of any part of a city or town or other village.

(*b*) Where part of a town or village is within the urban zone of a city, or part of a village is within the urban zone of a town, the whole of such town or village shall be deemed to be within the urban zone of such city or town, as the case may be;

"Joint urban zone."

(*c*) "Joint urban zone" shall mean an area included within the urban zones, as above defined, of two or more municipalities;

(*d*) "Senior municipality" shall mean as between a city, town or village, the municipality of the higher class, and as between two municipalities of the same class it shall mean the municipality having the larger population, according to the last revised assessment roll of each; "Senior municipality."

(*e*) "Board' shall mean "Ontario Railway and Municipal Board." "Board."

3. This Act shall apply to lands within cities, towns and villages and the urban zones as above defined surrounding the same. Application of Act

4.—(1) The council of a city, town or village may procure to be made for adoption by it a general plan of such city, town or village, and the urban zone adjoining it; or of such portion of the same as such council may deem expedient; Adoption of general plan.

(2) Such plan shall show all existing highways and any widening, extension or relocation of the same which may be deemed advisable, and also all proposed highways, parkways, boulevards, parks, play grounds and other public grounds or public improvements, and shall be certified by an Ontario Land Surveyor. What plan to show.

(3) Such plan may be amended from time to time by the council as it may deem expedient. Amendment.

(4) Such general plan, or plan amending the same, shall be approved by the Board before being finally adopted by the council of such city, town or village, and upon the application to the Board for such approval the council of all municipalities concerned shall, after notice to them, be entitled to be heard by counsel or agent. Approval of plan by Board.

(5) Upon such application the Board shall have power to order such changes to be made in such plan as it may deem necessary or proper. Changes by Board.

(6) A copy of such general plan, and of any plan amending the same, as approved by the Board and adopted by the council, shall Filing of plans when approved.

be filed with the clerk of the city, town or village, and with the clerk of any municipality within which is situate such urban zone or any part thereof, and also with the Board, and in the case of a joint urban zone a copy of said plan shall also be filed with the clerk of each of the urban municipalities which such joint urban zone adjoins, and such plans shall be open to inspection without fee by any person at all reasonable times.

Plans not to be registered until approved.

5.—(1) No plan of survey and subdivision of land within a city, town or village shall be registered unless it has been approved by the council of such city, town or village, or by the Board;

(2) No plan of survey and subdivision of land within an urban zone or joint urban zone shall be registered unless it has been approved by the council of each municipality within which any part of such land is situate, and by the council of any city, town or village which such urban zone or joint urban zone adjoins, or by the Board;

(3) No plan of survey and subdivision of land abutting on a highway of a less width than 66 feet, or upon which there is laid out a street of a less width than 66 feet, shall be registered unless it has been approved by the proper municipal council or councils and by the Board.

(4) No lot laid down on a plan of survey and subdivision of land which has not been approved as in this section required, shall be sold or conveyed by a description referring to such plan or to the lot as laid down on such plan.

Proceedings to be taken by persons desiring to register plan.

6. Where any person is desirous of surveying and subdividing into lots, with a view to the registration of a plan of survey and subdivision, a tract of land situate in any city, town or village, or in any urban zone, the following proceedings shall be had and taken:—

(1) Such person shall submit a plan of the proposed survey and subdivision prepared in accordance with the pro-

visions of *The Registry Act* to the council of the city, town or village, and also, where the land is situate within an urban zone, to the council of each municipality within which any part of the land is situate;

(2) The council of such city, town or village shall forthwith refer such plan to its engineer or other officer appointed for the purpose;

(3) Such engineer or other officer shall, without delay, consider such plan, and report in writing to the council whether in his judgment such plan should be approved by the council and what, if any, changes should be made therein.

Matters to be taken into consideration by engineer.

7. In considering and reporting upon such plan, such engineer or other officer shall have regard to the following matters:—

(1) Where the land is situate in a city, town or village:

(*a*) The number and width of the highways;

(*b*) The size and form of the lots;

(*c*) Making the subdivision conform, as far as practicable, to any general plan adopted as aforesaid; or where no such general plan has been adopted, making it conform as far as practicable and desirable to the plan upon which the surrounding or adjacent lands have been laid out;

(*d*) What other lands, if any, are related to the land in such plan within the meaning of section 12;

(2) Where the land is situate within an urban zone:

(*a*) The proximity of the land to any city, town or village adjoining such urban zone;

(*b*) The probability of the limits of such city, town or village being extended so as to include it;

(*c*) The number and width of the highways shown in said plan, and the providing of adequate driveways and thoroughfares connecting such city, town or village with the urban zone;

(*d*) Making the subdivision conform, as far as practicable, to such general plan adopted as aforesaid, or if no such general plan has been adopted, making it conform, as far as practicable and desirable, to the plan on which that part of the city, town or village nearest to the land is laid out;

(*e*) The size and form of the lots;

(*f*) What other lands, if any, are related to the land in such plan within the meaning of section 12.

Consideration pf report of engineer by council.

8.—(1) The council of the city, town or village, upon the receipt of the report of such engineer or other officer shall, without delay, consider the same, and may approve, or refuse to approve, the plan.

(2) In considering such plan with a view to its decision, the council shall have regard to the matters enumerated in section 7, and shall set out in writing the grounds of its decision, and file the same with the clerk of such council.

Notice of intention of council to consider report.

9.—(1) Where the land is situate within an urban zone at least four weeks' notice of the intention of the council of the city, town or village to consider the report of such engineer or other officer, shall be given to the clerk of each municipality within which any part of the land is situate.

(2) Such notice shall be in writing, and may be mailed prepaid to the clerk of the municipality, and shall be accompanied by a copy of the report of the engineer or other officer.

(3) Any municipal corporation so notified shall be entitled to be heard by counsel or agent before the council, upon the consideration of such report.

Jurisdiction of senior municipality in joint urban zone.

10. In the case of a joint urban zone of two or more municipalities, the council of the senior municipality shall exercise, in respect of such joint urban zone and land situate therein, such powers as are exercisable by the council of a city, town or village in respect of the urban zone adjoining it and land situate therein; but upon the consideration of a plan of land situate in such joint urban zone by the council of the senior municipality, or by the Board, the councils of the other municipalities shall be entitled to notice and to be heard.

Application to Board for approval of plan on failure of council to do so.

11.—(1) If, upon consideration of the report of the engineer or other officer, the council of a city, town or village fails to approve a plan of land situate within such city, town or village or, in the case of a plan of land situate within an urban zone, or joint urban zone, if the council of either, or any of the municipalities concerned, fails to approve such plan, the person submitting such plan may apply to the Board for approval of the same;

(2) The Board in determining such application shall have regard to the matters enumerated in section 7, and may approve or refuse to approve such plan, and shall have power to order such changes to be made in such plan as to the Board may seem necessary or proper.

Bringing in other lands and notice to owners.

12.—(1) Where the plan submitted is of land which is so related to other lands in the vicinity, whether owned by the same or different owners, that it is expedient that all such lands should be treated as one entire parcel for the purposes of subdivision under this Act, the owners of all such lands may be notified to attend before the council or Board, as the case may be, at the hearing of any application for the approval of such plan; and any agreement in writing or plan for the subdivision of such lands made or adopted by the owners of such lands, or any part of them, and approved by the councils of the municipalities concerned, or by the Board, as the case may be, shall be registered in the proper

Agreement of owners.

Land Titles Office or in the Registry Office for the registration division in which such lands, or any of them, are situate, and thereafter no plan of subdivision of such lands, or of any part of them, shall be registered unless it is in accordance with such agreement or plan.

Amendment of agreement or plan.

(2) Such agreement or plan may be altered from time to time by the parties thereto, or their representatives or successors in title, with the approval of the councils concerned, or of the Board, if the owners of all the lands embraced in the agreement or shown on the plan assent to such alteration.

Mortgages not affected.

(3) No such agreement or plan for the subdivision of lands shall be binding upon any prior mortgagee of such lands, or of any part of them, except with the consent of such mortgagee.

Certificate approving of plan.

13. Approval of a plan by a municipal council or by the Board shall be indicated by a certificate to that effect upon the plan, signed by the clerk or secretary respectively, and authenticated by the seal of the municipal corporation or Board, as the case may be.

Restriction on conveyances of land abutting on highway less than 66 feet.

14. In the case of a tract of land within a city, town or village, or in an urban zone, which has not been subdivided according to a plan approved under this Act, no part of it which abuts upon a highway of a less width than 66 feet, or which is situate within a distance of 33 feet from the centre line of such highway, shall be severed from said tract and sold under a description by metes and bounds or otherwise without the approval of the Board, and no deed of conveyance or mortgage in fee of such part of said tract shall be registered without the approval of the Board. Provided that this section shall not apply to sales of land according to a plan of survey and subdivision registered in the proper Registry Office prior to the coming into force of this Act.

Notice to county or high-

15. Where any plan or agreement prepared or made under this Act provides for the widening, extension, relocation or other alteration, in whole or in part, of a highway under the jurisdiction of a county council, or highway commission, such plan or agreement shall not be adopted or approved by the council of any city, town or village, or by the Board, until such county council or highway commission, as the case may be, has had an opportunity of being heard by counsel or agent after due notice.

way commission as to highways under their jurisdiction.

Constitution of Town Planning Commissions.

16.—(1) The council of a city, town or village may appoint a commission to be known as "The Town Planning Commission of the city, town or village (*as the case may be*) of ."

(2) Such commission shall be a body corporate and shall consist of the head of the municipality and six persons, being ratepayers, appointed by the council.

(3) The members of such commission, except the head of the municipality, shall hold office for three years, or until their successors have been appointed; provided that on the first appointment of the members of such commission the council shall designate two of such members who shall hold office for one year, two who shall hold office for two years and two who shall hold office for three years.

(4) Any member of the commission shall be eligible for reappointment.

(5) The commission of any city, town or village, upon its appointment, shall have and exercise all the powers and discharge all the duties of this Act, vested in and exercisable by the council of such city, town or village.

(6) The commission shall elect a chairman who shall preside at all the meetings of the commission.

(7) Four of the members of the commission present at any meeting shall constitute a quorum.

(8) The clerk, engineer, and other officers of the city, town or village shall, at the request of the commission, do and perform

all such duties under this Act, as they, or any of them, would do and perform for the council of such city, town or village in the like case, if such commission had not been appointed.

(9) The treasurer of such city, town or village shall pay all expenses incurred by the commission under this Act, upon presentation of accounts for the same certified by the chairman.

Rules of practice and procedure.

17. The rules of practice and procedure adopted by the Board shall apply to applications under this Act, and all persons and municipal corporations concerned shall be entitled to be heard, and may be represented by counsel or agent at the hearing.

Rev. Stat. c. 194 repealed.

18. *The City and Suburbs Plans Act,* being chapter 194 of The Revised Statutes of Ontario, is hereby repealed.

INDEX.

ARBITRATION ACT—
- action, stay of, on application of party to submission, 866
- Acts, reference to former, how construed, 873
- agreement, appraiser, for appointment of, 873
  - valuator, 873
- appeal, computation of time for, 869
  - notice to produce original books, etc., on, 872
  - production of exhibits on, 872
  - statement on, where arbitrators proceed on view or special knowledge, 869
  - when to lie and to what Court, 869
- application of Act, 865
- appointment, arbitrator, umpire or third arbitrator of, by Court, 866. 867
- appraisers, appointment of, by Court or Judge, 873
  - power of appointment of, when exercisable, 873
- arbitrator, administration of oaths by, 867
  - appointment of by Court on default by party, 866, 867
  - award of, setting aside, 868
  - clerical mistakes, correction of, by, 867
  - demanding by, of extortionate fees, 871
  - fees, what may be charged by, 869, 870, 875, 876.
  - meaning of in ss. 19 to 27, 869
  - misconduct of, removal for, 868
    - setting aside award for, 868
  - powers of, general, 867
  - remission of matters to, by Court, 868
  - special case, stating award in form of, by, 867
    - during reference, 872
  - knowledge or skill, proceeding on, 869
  - taxation of fees of, 871
- architect, fees of, as arbitrator, 869, 876
- award, appeal from, when to lie, 869
  - arbitrator may state, in form of special case, 867
  - enforcement of, 868
  - enlargement of time for making, 868
  - meaning of in ss. 19 to 27, 869
  - misconduct of arbitrator, setting aside, for, 868
  - setting aside, 868
  - special case, may be made in form of, 867
  - time within which, to be made, 868

ARBITRATION ACT—*Continued.*
- barrister, fees of, as arbitrator, 869, 870, 876
- central office, transmission of evidence to, 869
- commission, taking evidence by, 868
- costs, directions as to, where award set aside, 873
  - taxing officer, discretion of, as to, 871
- Court, appointment of arbitrator or umpire by, 866, 867
  - enforcing award by leave of, 868
  - enlarging of time for making award, by, 868
  - meaning of, 865
  - misconduct, power of, to remove arbitrator for, 868
  - reconsideration, remitting for, by, 868
  - special case stating award in form of, 867
  - stating special case for, on question of law, 872
- Crown, application of Act to, 865
- *de bene esse,* order for taking evidence, 868
- Divisional Court, appeal to, 869
- documents, permitting production of copies of, in lieu of originals, 872
  - production of originals of, on appeal from or motion to set aside award, 872
- engineer, fees of, as arbitrator, 869, 870, 876
- errors, powers of arbitrators as to correcting, 867
- evidence, order for production of prisoner to give, 872
  - permitting filing of copies of documents in lieu of originals, 872
  - production of originals on appeals from or motions to set aside award, 872
  - taking of, *de bene esse* or under commission, 868
  - transmission of, to central office, 869
- exhibits, notice to produce, on appeal from or motion to set aside award, 872, 879
  - production of, on appeal from or motion to set aside award, 872, 879
  - transmission of, to central office, 869
  - use of copies of, in lieu of originals, 872
- fees, action for, by arbitrator, 871, 872
  - agreement as to payment of, 870
  - appeal from taxing officer as to, 871
  - discretion of taxing officer as to, 871
  - non-professional arbitrators, of, 869, 875
  - penalty for demanding exorbitant, 871
  - professional arbitrators, of, 869, 870, 876
  - taxation of, 870, 871
  - witness, of, what may be taxed, 870
- implied provisions in submissions, 866, 874, 875

ARBITRATION ACT—*Continued.*
  Judge, appeal to, 869
    meaning of, 865
  Judicature Act, application of, and of rules, 868, 869
  non-professional arbitrator, fees of, 869, 875
  oaths, power of arbitrators to administer, 867
  official referee, who to act as, where submission provides for reference to, 866
  penalty, arbitrator attempting to extort excessive fees, for, 871
  prisoner, production of, for examination, 872
  reconsideration, Court may remit matters for, 868
  rules of Court, application of, to order or commission for taking evidence, 868, 869
    meaning of, 865
    power to make, 873
  setting aside award, application for, time for making, 872, 873
    computation of time for application for, 873
    costs on, direction as to, 873
    misconduct of arbitrator, for 868
    production of exhibits on motion for, 872
  solicitor, fees of, as arbitrator, 869, 870, 876
  special case, stating award in form of, 867
    stating questions of law for opinion of Court, 872
    knowledge or skill, arbitrator proceeding on, 869
  stay of proceedings, application for, by party to submission, 866
  submission, arbitrator, powers of, under, 867
    arbitrator or umpire, appointment of, by Court, 866, 867
    implied provisions in, 866, 874, 875
    irrevocability of, 866
    meaning of, 865
    stay of proceedings after, 866
    who to act where reference to be to official referee, 866
  subpoena, issue of, 868
  surveyor, fees of, as arbitrator, 869, 870, 876
  taxation, appeal from, 871
    discretion of taxing officer on, 871.
    fees to be allowed on, 871
  umpire, appointment of, by Court, 866, 867
  vacancies among arbitrators, 867
  vacations not to be reckoned in computing time for appeal or for setting aside award, 873
  valuators, appointment of, by Court or Judge, 873
  view, statement as to result of, by arbitrators proceeding on, 869
  witness, fees of, what may be taxed, 870
    prisoner, order for production of, for examination as, 872

BUREAU OF MUNICIPAL AFFAIRS ACT—
bulletins, issue of, by bureau 924
bureau, bulletins, issue of, by 924
department, attached to 922
direction of 922
duties of 923, 924, 925
establishment of 922
laws of Ontario, reporting as to changes in 924
foreign, reporting as to 924
Lieutenant-Governor, reporting to 925
meaning of 922
Provincial Municipal Auditor to be officer of 923
statistical information, etc., collection of, by 924
director, appointment of 922
meaning of 922
powers and duties of 923
rank of 922, 923
reports to 923
returns to 923
functionaries, powers of, not affected 925
Hydro-Electric Power Commission of Ontario, powers of, not affected 925
laws of Ontario, report as to changes in, by bureau 924
laws of other countries, inquiring into, etc., by bureau 924
Ontario Railway Municipal Board, powers of, not affected 925
Provincial Board of Health, powers of, not affected 925
Provincial Municipal Auditor to be officer of bureau 923
public utilities, superintendency of book-keeping, etc., of, by bureau 923, 924
report to Lieutenant-Governor, by bureau 925
statistical information, etc., collection of 924

LOCAL IMPROVEMENT ACT—
actions, limitation of time for bringing, 812
agreements for construction of bridge over ravine, 822, 823
works on boundary lines, 820, 821, 822
appeals from Court of Revision to County Judge, 812, 813
to Divisional Court as to repair of work, 818
assessment, *see* special assessment.
Board of Health, construction of sewers on recommendation of, 798
borrowing powers, 813, 814, 815
boulevards, constructing or maintaining, on streets, 792
boundary lines, agreements for constructing works on, 820, 821, 822
by-laws for constructing works on, 821
maintenance and repair of works on, 822
rates for works on, collection of, 821
payment of, to initiating corporation, 821, 822
not to relieve lands from special rate, 821

Local Improvements Act—*Continued.*
  breakwaters, constructing, in cities and towns, 793
  bridge, construction of, approval of Municipal Board when required to, 795
      as part of street, 792
      on two-thirds vote of council, 797
      over ravine, 822, 823
    cost of, apportionment and assessment of, 807
    what to include, 789
  buildings, value of, to be excluded, 792
  by-laws, amending, 816, 817
    debentures under, application of Municipal Act to, 813
      consolidation of, 815
      issue of, on completion of work, 813
      one series of, for several works, 815
    general, adopting local improvement system, 815
      as to making of reports, estimates, etc., 809, 810
    liability under defective, 816
    new, power to pass when first quashed, 816
    quashed, not to be, when special assessment confirmed, 816
    quashing, for defects in proceedings, 816
    several works, for, separate, not necessary, 796
    undertaking works, for, 796
      part of work, for, 803
  cities and towns, works for protection of river banks in, 793
      supplying electric light or power, 792
  clerk, certificate of, as to cost of work, 810
    meaning of, 789
    petition, to delay certifying to, when complaints made as to, 802
      determination of sufficiency of, by, 801
      lodging, with, 803
    special assessment roll, correction of, by, 811, 812
  commutation of special rates, 815
  construction includes reconstruction, 789
  contractor, guarantee of work by, 804, 805
  corner lots, reduction of assessment of, 806
  corporation, meaning of, 789
  corporation's portion of cost, Court of Revision not to alter, 811
      debentures for, 813
      meaning of, 789, 790
      procedure for ascertaining, 803
      reduction in special assessment to be part of, 805
      what, includes, 805
      yearly estimates may include, 814

LOCAL IMPROVEMENTS ACT—*Continued.*

- cost of work, assessment of, by districts, 807, 808
  - frontage rate, 803
  - items not to be included in, 805
  - debentures to meet, 813
  - estimate of, 808
  - guarantee by contractor, no reduction from, on account of, 804, 805
  - items that may be included in, 804
  - statement of, for Court of Revision, 810
- council, commutation of special rates by, 815
  - construction of certain works on two-thirds vote of, 794, 797
  - meaning of, 790
  - new assessment by, when first invalid, 816, 817
  - reports, estimates, etc., to be procured by, 808, 809
  - sewers, apportionment of cost of, by, 805
  - special assessment roll, preparation of, by, 809
    - imposing, on lands liable, by, 815
- county to include district, 790
- Court of Revision, adjournment of meetings of, 811
  - appeals from, to County Judge, 812
    - to, 810
  - cost of work, statement of, for, 810
  - powers of, 810, 811
  - proportions of cost of work not to be altered by, 811
  - time and place and notice of meeting of, 810
- culverts, cost of, to be paid by corporation, 805
- curbing, constructing, on a street, 791
  - two-thirds vote, on, 797
    - petition to Municipal Board against, 797
  - land to be specially assessed for, 816
  - meaning of, 790
- debentures, *see* by-laws.
- Divisional Court, appeals to, as to repair of work, 818
- drain connections, *see* private drain connections.
- dykes, construction of, on rivers in cities and towns, 793
- electric light and power equipment, plants and works in cities and towns, 793
  - extension of works for supply of, 792
- engineer, lifetime of work, determination of, by, 790
- exemption from taxation not to apply to special assessment, 818, 819
  - granted by Special Act, 819
- fire engines, purchase and management of, by town or village, 823, 824
- forms, approval of, by Municipal Board, 825.

Local Improvements Act—*Continued.*

- frontage, meaning of, 790
  - special rate according to, 803, 804
- gas, extension of works for supply of, 792
- gas mains and service pipes, construction of, in connection with pavement, 793, 794
  - assessment of cost of, 794
- grass, assessment of annual cost of cutting, on streets 819, 820,
- guarantee of work by contractor, 804, 805
  - no deduction from contract price on account of, 804, 805
- heat, extension of works for supply of, 792
- initiative plan, by-laws for undertaking works on, 796
  - notice of intention to proceed on, 799
    - service of, 799, 800
  - petition against, 799
- irregularly shaped lots, reduction of assessment of, 806
- Judge of the County Court, appeals from Court of Revision to, 812
    - powers of, on, 812, 813
  - complaints as to petition, investigation of, by, 802
  - lifetime of work, determination of, by, 790
  - meaning of, 790
  - repair of work, order of, as to, 817
- Judge of the Supreme Court, order of, as to repair of work, 817
- lifetime of work, Court of Revision may determine, 810
  - meaning of, 790
  - repair during, 817
  - report as to, 808
  - special assessment not to extend beyond, 815
    - exception, 815
- light, extension of works for supply of, 792
- lighting of streets, assessment of annual cost of, 819, 820
- Local Board of Health, construction of sewers on recommendation of, 798
- lot, description of, in petition, 801
  - meaning of, 790
  - reduction of assessment of corner triangular, etc., 806
- maintenance, *see* repair of work.
- Municipal Board, apportionment of cost of certain works, by, 796
  - approval of, required to by-law for undertaking part of work, 803
    - in case of certain works, 795, 796
  - forms of by-laws, notices, etc., prescribing, by, 825
  - petition to, against undertaking work, 797
  - special assessment not to be made by, 796

LOCAL IMPROVEMENTS ACT—*Continued.*
- municipality, meaning of, 790
- newspaper, in what, publication to be made, 791
- notice of intention to undertake works, publication of, 798
  - service of, on initiative plan, 799
- oiling streets, assessment of annual cost of, 819, 820
- owner, owners, meaning of, 791
- owners' portion of cost, meaning of, 791
  - not to be deemed part of debenture debt, 814
  - special rates for, to form special fund, 814
- parks, establishing or laying out of, 792
  - special assessment for, term of, 815
  - streets to include, 791
- pavements, construction of certain works in connection with, 793, 794
  - on two-thirds vote of council, 797
  - cost of certain, assumption by corporation of part of, 805
  - meaning of, 791
- paving, meaning of, 791
- petition, construction of certain works only on, 793
  - private drain connections without, 794
  - works generally with or without, 796
  - effect of, against work, 800
  - joint owners, by, 802
  - lodging, with clerk, 803
  - lots of owners to be described in, 801
  - Municipal Board, to, against work, 795, 797
  - names, withdrawal of, from, 803
  - no right of, against certain works, 797
  - owner, by, against work, 799
    - not on assessment roll may, 802
  - signatures to, number required, 798
    - determination of complaints as to, 802
  - sufficiency of, clerk to determine, 801
- plants on streets a work undertaken, 792
- power, extension of works for supply of, 792
- private drain connections, construction of in connection with pavement or sewer, 793, 794
  - on two-thirds vote, 794
  - cost of, how assessed, 794
- publication of intention to undertake works, 798, 799
- public drives, establishing, etc., of, is a work undertaken, 792
  - included in word "street," 791
- rates, *see* special rates.
- ravine, bridge over, separating municipalities, construction of, 822, 823

Local Improvements Act—*Continued.*
- repair, cost of, not to be specially assessed, 793
  - duty to, compelling performance of, 817, 818
  - general duty to repair highways not affected by Act, 817
  - works, duty of corporation to, 817
    - on boundary lines, duty of corporation to, 822
- reports before passing of by-law, 808, 809
  - effect of failure to make, 809
- retaining wall, construction of, on rivers in cities and towns, 793
- sanitary grounds, construction of sewer on, 798
- service of notices, manner of, 799, 800
- service pipes, construction of, in connection with pavement or sewer, 793, 794
  - assessment of cost of, 794
- sewers, apportionment of cost of, 805
  - constructing, enlarging or extending, 792
    - certain works in connection with, 793, 794
      - on two-thirds vote, 797
    - on recommendation of Board of Health, 798
  - corporation's portion of cost of, what to include, 805
  - meaning of, 791
  - non-abutting land, assessment of, for, 807
- shrubbery on streets, assessment of annual cost of trimming, 819, 820
  - planting, etc., a work undertaken, 792
- sidewalk a work undertaken, 792
  - assumption by corporation of part of cost of, 805
  - construction of, on two-thirds vote, 797
  - land to be specially assessed for, 806
  - meaning of, 791
- sinking fund, power to invest, in local improvement debentures, 814
- snow and ice, assessment of annual cost of clearing, from streets, 819, 820
- sodding street a work undertaken, 792
- Special Act, exemptions under, 819
- special assessment, abutting lands, on, 803
  - action does not lie to declare, invalid, 812
  - annual instalments of, 815
  - bridge, opening or widening street, etc., for, 795, 796, 807
  - complaints against, hearing, 810
  - corrections in, by Court of Revision, 810, 811
  - curbing, for, 806
  - districts, by, 807, 808
  - encumbrance, when not deemed to be, 824, 825
  - frontage rate for, 803
  - land exempt from taxation, of, 818, 819

LOCAL IMPROVEMENTS ACT—*Continued.*

- special assessment, new, when first irregular, 816, 817
  - non-abutting lands, on, for cost of certain sewers, 806
  - procedure for making, 808, 809
  - reduction of, on corner lots, etc., 806
  - report as to reduction in, 808, 809
  - roll, preparation of, 809
  - sidewalk, for, 806
  - varying rate of, power to impose (Que.), 803, 804
- special rates, collection of, 814, 815
  - for works on boundary lines, 821
  - commutation of, 815
  - deficiencies in, adjustment of, 814
  - encumbrance, when, not deemed to be, 824, 825
  - recovery of, by action, 815
- square, establishing, etc., a work undertaken, 792
- standards for supply of light and power in cities and towns, 793
- stop-cocks, construction of, in connection with pavement or sewer, 793, 794
- streets, annual cost of cleaning, etc., 819, 820
  - meaning of, 791
  - opening, widening, paving etc., 792
    - apportionment of cost of, 807
    - approval of Municipal Board when required for, 795
    - on two-thirds vote, 797
- street intersections, cost of work at, to be borne by corporation, 805
- subway, construction of, under railway, 793
- temporary loans to meet cost of work, 813
- tenant for years, when, to be deemed owner, 791
- township, fire engines, purchase of, by, 823
  - purchase by, of works constructed by private owners, 794, 795
  - waterworks, construction of, by, 823
- trees on streets, assessment of annual cost of trimming, 819, 820
  - planting, etc., is a work undertaken, 792
- triangular lots, reduction of assessment of, 806
- two-thirds vote, construction of certain works on, 794, 797
- underground conduits, construction of, 793
- unorganized territory, purchase by township or town in, of works constructed by private owners, 794, 795
- value, meaning of, 792
- vendor and purchaser, special rates not an encumbrance as between, 824, 825
- village, construction of waterworks by, 823
- water mains, construction of, in connection with pavement, 793, 794

LOCAL IMPROVEMENTS ACT—*Continued.*
- water service pipes, construction of, in connection with pavement, 793, 794
  - assessment of cost of, 794
- watering streets, assessment of annual cost of, 819, 820
- waterworks, construction of, on two-thirds vote, 797
  - petition to Municipal Board against, 797
  - by townships and villages, 823
- weeds on streets, assessment of annual cost of cutting, 819, 820
- work undertaken, meaning of, 792
  - must be proceeded with, 793
  - what, may be, 792, 793
- works, completion of, by succeeding council, 825
  - construction of certain, on two-thirds vote, 794, 797
  - debenture by-laws, one for several, 815
  - guarantee of, by contractor, 804, 805
  - meaning of, 792
  - methods of undertaking, 796, 797
  - part of, power to undertake, 803
  - purchase of, when constructed by private owners, 794, 795
  - what, may be undertaken, 792, 793

MUNICIPAL ACT—
- abandonment of highways, *see* highways
- abattoirs, establishing and maintaining public 482
  - prohibiting, or regulating and inspecting 482
  - slaughter of animals intended for food except in 482
- absence, clerk of 225
  - head of council, of, from meeting 212
  - member of council, vacation of seat by 174
- accidents, children to, by riding behind vehicles, etc., prevention of 496
  - coasting, caused by, liability for 496, 497
  - explosives, by, precautions to be taken to prevent 469
  - fire, by, securing against in certain buildings 471
  - highways on, liability for. *See* highways.
  - snow and ice falling from roofs, caused by 482 to 489
- acclamation, election by 120,124
- accounts, clerk, duty of, to keep 224
  - preserve and file 224
  - debts, separate, of, to be kept 331
  - interest 331
- accounts and investments. *See* sinking fund.
- acquire, power to, includes power to expropriate 5

MUNICIPAL ACT—*Continued.*

- actions, agreements, to enforce 419
  - by laws, to restrain infraction of 499
  - building by-laws, to restrain breech of 692
  - compensation for land expropriated, recovery of, by 405
  - default in repairing highways, for 598 to 631. *See* also repair of highways.
  - duties, etc., imposed by statute, to enforce 419, 420, 421
  - expense incurred in doing what by law required to be done, 692
    - recovery of, by 692
  - illegal by-law, for acts done under 419, 420, 421
  - municipal corporation, against 408, 409, 410
    - by 410, 411
  - negligence, for 26 to 39
  - nuisance, for 26 to 39
  - ratepayers, by 415 to 419
  - torts, for 21 to 40
- actual occupation, person in, to be deemed owner 5
- adjournment, council meetings, of. *See* Council.
  - nomination meeting, of, where poll necessary. *See* nomination.
- administration of justice, contribution of cities and separated towns to cost of 432, 433, 434
  - arbitration as to 433, 434
- advertising devices, defacing of, prohibiting 482
  - erection of, prohibiting or regulating 482
  - pulling down of, prohibiting 482
  - sign painters, licensing, regulating and governing 537
- agents of candidates. *See* candidates.
- agricultural exhibitions. *See* exhibitions.
- aisles, public buildings, in, obstruction of 466
- aldermen, annual allowance to, payment 556
  - change in number or mode of election of 82, 83
  - election of, by general vote 83, 118, 119
    - wards 82, 118, 119
  - justices of the peace *ex officio*, to be 422
  - nomination of 118,119. *See also* nomination.
  - number of 82, 83
  - oaths, power of, to administer 237
  - vacancy in office of, how filled 179, 180, 181
- amateur athletic and aquatic sports, aid to 455
- amusement, places of, egress from, provisions for facilitating 466
  - fire, accident by, securing against, in 471
  - license of, revocation of 549, 706
  - location of, prohibiting the 549, 706
  - regulating and licensing 549, 706

MUNICIPAL ACT—*Continued.*
animals, carcases of, throwing, on highways, etc. 686
cows, keeping of, prohibition of, 464
regulation of 464
cruelty to, prevention of 464
damages, liability of owners of, impounded for trespassing 479, 480, 481
driving of, on certain highways, prohibiting 509, 510, 706
encumbering, injuring or fouling by, of highways, etc. 685
food, intended for 482
hospitals for 530
impounded or distrained, services with reference to, compensation for 481
impounding of, for running at large or trespassing 479, 480, 481
infirmaries for 530
keeping of, regulation of the 464
certain, prohibition of 464
pounds for safe keeping of impounded, providing 479, 480, 481
running at large, prohibition or regulation of 479, 480, 481
slaughter of 482
trespassing, prohibition or regulation of 479, 480, 481
unslaughtered, seizure and disposal of 534
wild, destructive of poultry, bounties for destruction of 458
annexation, assent of electors to 64
assets and liabilities, adjustment of, on 72 to 81
by-laws, effect of, on 70, 71, 72
district, of, to village 59
drainage works undertaken, effect of, on 78, 79, 80
jurisdiction of council to continue after 80
local improvements undertaken, effect of, on 78, 79, 80
police village, of territory to 694
qualification of electors in added territory after, and before new voters' list 117, 118
members of council 92
taxes in added territory after, collection and disposition of 72, 78
township, of part of, to city or town 59, 61
town, of, to urban municipality 64
unorganized territory, of land in, to municipality 59
township in, to county 68
village, comprising parts of more counties than one, of, to county 58
village of, to urban municipality 64
apartment houses, meaning of term 532
prohibiting or regulating and controlling location or erection of 532, 533

MUNICIPAL ACT—*Continued.*
arbitration, administration of justice, as to contribution to cost of 433
Act, application of, to 393, 394
arbitrator, appointment of 394, 395, 396
liability, not an admission of 396
more persons than one interested, in case of 394
notice of 394
fees of, certificate as to, filing of 403
payment of 403
meeting of 397, 398
adjournment of 398
oath by 397
omission to take, effect of 397
persons disqualified to be 396, 397
resident of municipality not to be, in compensation cases 396
statement by, of reasons for award 400
third, appointment of 395
view, etc., statement by, of effect of 399, 400
award, appeal from 399 to 403
additional evidence on 401
amount awarded, increase or diminution of, on 401
modification of award on 401
remitting matters referred on 401
setting aside award on 401
copy of, to be filed with clerk of municipality 398
delivery of, after payment of fees 403
boundary lines, township, as to disputes as to 594, 657, 658, 659
bridges, as to erection and maintenance of 657
in judicial districts, as to erection and maintenance of 594
claim, particulars of, delivery of, to corporation 398
filing with arbitrator 398
power of arbitrators to amend 398
compensation for lands expropriated or injuriously affected, as to 350. *See also* expropriation.
where claim does not exceed $1,000, determination of 397
corporation, right of, to refer to 393
costs of 399
payment of 399
taxation of 399

Municipal Act—*Continued.*
arbitration, court house and gaol, as to compensation for use of 435
contribution to expense of erecting, etc. 434
site of 434
cumulative evidence, right to refuse to hear 399
driftwood in streams, as to 594
expropriation of lands, as to compensation for 350
highway, access to, as to compensation for interference with 667, 668
establishment of, on township boundary, as to 655
highways, as to disputes as to cost of repairing 655
injurious affection of lands, as to compensation for 350
lock-up, as to compensation for use of, by town 436
Municipal Arbitrations Act, application of, to 393
new incorporation, as to adjustment of assets, etc., on 73, 76
prisoners, as to compensation for care and maintenance of 435
procedure in 397 to 407
Registry Act, s. 23, as to contribution for expense under 433
substituted road, as to sufficiency of 667, 668
timber, gravel, etc., as to compensation for 680
passing over land to search for, etc., as to compensation for 680
areas, charge for permitting 677
collection of 677
highways and sidewalks, under 677
remedy over for damages recovered by reason of 678
repair, want of, resulting from, corporation to be liable for 678
arenas, bonus in aid of 445
vote required for 296, 297
armoury for militia or volunteer corps, acquiring land for 498
art schools, aid to 518
ashes, collection, removal and disposal of. *See* garbage.
regulating the removal and safe keeping of 502
assent of electors. *See* voting on by-laws.
assessment commissioners, appointment of, for cities or towns 231
annual, need not be made 231
duties of, as to certifying that application for by-law sufficiently signed 280
ineligible to be members of council 93
notices as to assessment to be given by 231
office, declaration of, by 236
assessment roll, certificates as to, clerk to furnish 136
give to applicants 136
form of 136
penalty for not furnishing 136

MUNICIPAL ACT—*Continued.*
assessment roll, voters' list, preparation of, from 135
assessors, appointment of, annual, need not be made 231
assessment commissioner, by 230
local municipalities, for 230
board of, constitution of 230, 231
powers and duties of 231
clerks may not be 230
collectors may be 230
districts may be assigned to 230
duties of, performance of by assessment commissioners in certain cities and towns 231
regulations as to performance of 230
ineligible to be members of council 93
members of council may not be 230
office, declaration of, by 236
treasurers may not be 230
assets, adjustment of, on new incorporation, etc. 72 to 78
bridges are not 74
court houses and gaol when not to be deemed 76, 77
granolithic sidewalks are 74
re-opening agreement as to 75
school houses are not 74
in annexed territory 77, 350
assumption of highways. *See* highways.
auctioneers, discretion as to licensing 536, 537
licensing, regulating and governing 536, 537
sales by sheriffs or bailiffs of goods seized, license not required for 536
of goods distrained for rent, license not required for 536
audit, accounts, of 235
auditor, appointment of 231, 232, 236
for succeeding year 231, 232
assets and liabilities, duties of, as to 234
banks and companies to allow inspection by, of treasurer's deposit account 234
county, appointment of, by head of council 231
duties of 232, 233, 235
penalty for failure to perform 233
ineligible to be member of council 93
oaths, power of, to administer 232
office, declaration of, by 237
penalties on 233, 235
receipts and expenditures, duties of, as to 232, 233
treasurer's security, duties of, as to 233
vacancy in office of, how filled 232

Municipal Act—*Continued.*
- avenues, acquiring land for 461, 462
  - establishing, etc. 461, 462
- bagatelle and billiard tables, provisions as to licensing, etc.
  - persons who keep 547, 548, 706
  - proprietary clubs which keep 547, 548, 706
- ballot, votes at election to be by 139
  - voting of members of council by, prohibited 215
  - warden, election of, by, prohibited 215
- ballot box, deputy returning officer to keep exposed 139
  - locked and sealed 139
  - show 139
- ballot boxes, clerk to procure and deliver to deputy returning officers, 129, 130
  - cost of, to be paid by treasurer 130
  - deputy returning officers to provide, if not supplied 130
  - election documents, containing, delivery of, to clerk 154, 155
    - to be placed in 154
  - lock and key, to be provided with 129
  - material of which, to be made 129
  - mode of construction of 129
  - penalty for failure to provide 130
  - preservation of, after election 130
  - return of, after close of polls 130
- ballot papers, *see also* polling places.
  - account of, to be kept 152, 153
  - ballot box, placing, in 143
  - cancelled 144
  - clerk to have printed sufficient number of 130
  - declined 143
  - delivery of, to deputy returning officers 132
  - destruction of 165
    - declaration as to 165
  - disposition to be made of 154
  - electors shewing, when marked 160
    - penalty for 164
  - forms of, 131, 132
    - deviations from 131, 132
  - inducing electors to show 160
    - penalty for 164
  - initialing, by deputy returning officer 141
  - inspection of 165
    - proceedings to obtain 165, 166
  - marks on, held to be sufficient 147, 148, 149
    - not to be sufficient 149 to 152

MUNICIPAL ACT—*Continued.*
ballot papers, objections to, decision as to, by deputy returning officer 152
noting of 152
numbering of 152
offences relating to 161, 162, 163
penalties for 164
packets, to be put into 152
proceedings by voter after receipt of 142, 143, 144
retention of, by clerk 165
sealed packets, containing, delivery of, to clerk 153, 155
separate sets of certain 130, 131
statements as to, to be made by clerk 153
casting up of, by clerk 155, 156
taking out of polling place 143
torn or mutilated 151, 152
void for uncertainty, 151
voters, delivery of, to 141
voting on by-laws, etc., for, form of 294
bands. *See* music, bands of 455
banks to allow inspection of accounts of treasurer 234
barns, regulation of erection, location and use of 509
bathing houses, aid in the construction, etc., of 455
illegal or immoral purposes, use of, for 492
inspection of 492
bathing, person, of the, in public waters, prohibiting or regulating 463
beacons, aid in construction of 458
erection and maintenance of 459
beet sugar factories, bonus in aid of 445
vote required for 296, 297
begging, common, prohibiting 492
highways or public places in, prohibiting 492
exposure of deformed, etc., persons for purpose of, on 492
bells, ringing of, prohibiting or regulating the 474
benefit funds. *See* superannuation and benefit funds.
benzine, businesses in which, is used, licensing, regulating and governing 544
See also explosives.
bicycle paths, riding or driving over 678
setting apart, in highways 678
bill distributors, licensing, regulating and governing 537
posters 537
billiard tables. *See* bagatelle tables.
birds, destruction of, prevention of 464

MUNICIPAL ACT—*Continued.*
blacksmith shops, location, erection and use of buildings as 530, 531
blasphemous, obscene or grossly insulting language, preventing use of 490
Boards of Commissioners of Police,
by-laws of, authentication of 426
power of, to pass 536 to 555
proof of 426
chairman of, election of 425
cities, in, composition of 423, 424
constables, attendance of, at certain polling places, to secure 440
counties, by-laws of, constituting, repeal of 425
in, composition of 425
dissolution of 425
license fees under by-law of, fixing of, by council 278
licenses, discretion of, as to granting or refusing 280, 281
meetings of, to be public 426
penalties for infraction of by-laws of, power to enact 690
police force, government of, regulations for, to be made by 427
members of, appointment of, by 426
must obey lawful orders of 427
remuneration of, tobe determined by 427
quorum of 426
remuneration of members of 424
towns, by-laws of, constituting, repeal of 424
in, composition of 423
dissolution of 424
witnesses, power of, to summon and examine 425
duty of, to attend before 425
Board of Control, actions, certain of, not to be reversed or varied by council without two-thirds vote 219
administration of oaths by members of 237
by-laws constituting, repeal of 218
cities in 217
composition of 217
salaries of 217
council, vote of, necessary to reverse action of 219, 220
duties of 218, 219, 220, 221
meetings of, presiding officer at 218
members of 218
election of 125, 126, 217
justices of the peace, *ex officio*, to be 422
nomination of 118, 125

Municipal Act—*Continued.*
- Board of Control, presiding officer of council to act as member of, in certain cases 218
  - quorum of 218
  - Toronto, for 217
    - composition of 217
    - nomination and election of 125, 126, 217
    - salaries of 217
  - two-thirds vote, when necessary to reverse action of 219, 220
  - vacancies in, how filled 218
- Board of Education, members of, ineligible to be members of council 94
  - nomination and election of 125, 126
- Board of Health, liability of corporation for expenses incurred by 13, 14
- boarding houses, egress from, provisions for facilitating 465, 466
  - fire, accidents by, securing against in 471
- boarding stables, establishment of, in defined districts 528, 530
  - hours of labour in, regulating of 554. *See also* hours of labour.
- boathouses, inspection of 492
  - use of, for illegal or immoral purposes 492
- boilers, construction of, regulating the 502
  - removal of 502
- bonus, arenas for aiding. *See* arenas.
  - beet sugar factories, for aiding. *See* beet sugar factories.
  - breaches of conditions on which, granted 446, 447
  - company, nominee of, to which, granted not to vote on by-law 447
    - shareholder in 447
  - debt, payment or guaranty of, is a 442
    - for, when to be payable 313
  - established business, what is an 448, 449
  - exemption from taxation, is a 443, 444
    - period for which may be granted 449
  - expenditure of money is a 444
  - fixed assessment, granting of a, is a 443, 444
    - period for which, may be granted 449
  - gift of money is a 442
  - grain elevators, for establishment of. *See* grain elevators
  - highway, stopping up, etc., of, is a 442, 443
  - hospitals, for aiding 445. *See also* hospitals.
  - industry, removal of, from another municipality, not to be granted to secure 448, 449
    - similar, restriction on right to grant, to 447
  - iron works, for promotion of. *See* iron works.

MUNICIPAL ACT—*Continued.*
- bonus, land, gift of, is a 442
        - leasing of, at a nominal rent, is a 442
        - purchase of, is a 442
    - limitation of amount of, 449, 452
        - power to grant, to established business 448
    - loan of money is a 442
        - guaranty of, is a 442
    - loans, payments on account of, deposit of, in bank 449, 450
    - manufactures, for promotion of. *See* manufactures.
    - person to whom, granted not to vote on by-law 447
    - prohibition as to granting 447, 448, 449
    - public place, stopping up, etc., of, is a 442
    - railways, in aid of. *See* railway.
        - by county 450, 451, 452
            - township 78, 79, 80, 453
    - railway company, subscribing for shares in 452
    - refining or smelting ore, for promotion of works for. *See* refining ore, smelting ore.
    - rolling mills, for promotion of. *See* rolling mills.
    - Sanitariums, for aiding of. *See* sanitariums.
    - vote necessary for assent to by-law for granting 296, 297
    - work or improvement, undertaking of, is a 442, 443
- booms, protecting and regulating 528
- bootblacks. *See* children.
- borrowing. *See also* money borrowed.
    - electric light works, for extension of, 492.
    - electric power works 492
    - electric works 492
    - expenses incurred in doing what by-law requires to be done, for 692
    - food and fuel depots, for establishment of 473
    - gas works, for extension of 492
    - money for the purposes of the corporation, 283
        - debentures for 283
    - power, debts not to be included, in determining limit of 284
    - sewage disposal works, for 492
    - water power developing works, for 492
    - water works, for 492
- boulevards, abutting owners, construction of, by 677
    - building operations, use of, for 526
        - fee for 526
    - establishing and laying out, etc., of 461, 462
    - highways, setting apart parts of, for 665, 677
    - land for, acquiring 461

MUNICIPAL ACT—*Continued.*

- boulevards, Public Parks Act, exercising powers under, as to 461
  - regulations as to 665, 677
  - traffic, not to interfere with 677
- bowling alleys, license of, revocation of 549, 706
  - location of, prohibiting 549, 706
  - regulating and licensing 549, 706
- boxing matches, prohibiting of certain, without permission 489
- bread, assize of 245, 246
  - tickets, regulating the use of 505
- bribery, acts constituting 201 to 205
  - disqualification for 196, 203
  - penalty for 203
    - when not recoverable 208
  - sections, posting at polling places 207
- bridges, abandonment of, by county council 585, 586
    - Minister of Public Works 584
  - aid to other municipal corporations in respect to 675
  - approaches, certain, to form part of, for purpose of, s. 449, 590
    - jurisdiction over 583
  - asset, not an, for the purpose of adjustment of assets 74
  - assumed as county bridges, building and maintaining of 592
  - assumption of, by county council 585
    - by-law for, repeal of 585
  - boundary lines on, maintenance of 592, 593
      - arbitration as to expense of 657
      - expense of 657
    - over rivers, etc., on, agreement as to maintenance of 584
      - duty to erect and maintain 592, 593
  - by-laws in respect of 567, 568
  - cattle, for, over highways 665
  - companies or individuals, owned by 580
  - county, to be maintained by, not to be abandoned 586
    - what are 567, 580, 581
  - county council, jurisdiction of, over bridges over certain rivers 567, 580, 581
  - Crown, abandonment of control of 584
  - culvert, and, difference between 1
  - deviations, over 595, 596, 597
  - disputes as to action to be taken where jurisdiction over, joint, arbitration to determine 657
    - liability as to, determination of 655

MUNICIPAL ACT—*Continued.*
- bridges, drain, over 490
  - driving, etc., on 456, 705
  - encumbering, injuring or fouling of 685
  - highways, to be 1, 2
  - jurisdiction over 580, 581, 582, 583
  - length of more than 300 feet, of, may be declared to be county 587 to 591
    - procedure for declaring 587 to 591
  - minister of public works, under control of 584
  - provisional judicial districts, in, jurisdiction over certain 593
    - maintenance of 593
  - Quebec cases 565, 566
  - rebuilding, municipal board may relieve from 647
    - notice of application for relief from 648
    - terms and conditions as to 648
  - repair of. *See* repair of highways and bridges.
  - rubbish or refuse, throwing, etc., on 686
  - specifications for certain, to be built in accordance with 598
  - villages, in, assumption of 582, 583
  - watercourse, over 490
- bridge company, guaranteeing debentures of 681
  - lending money to 681
  - shares in, subscribing for 681
- British subject, elector must be a 111
  - member of council must be a 88
  - petitioner for erection of village must be a 51
- building line. *See* residential streets.
  - restrictions, deviations from, in special cases 533
- buildings, alteration of, regulation of 499
  - by-laws as to, convictions for contravention of, quashing
    - proof of, may be dispensed with by Judge 692
      - made by leave of Judge 692
  - construction of, regulation of 499
  - demolition of, to prevent spread of fire 45, 503, 504
  - dilapidated, pulling down, repairing or renewing 501
  - fire, to prevent spread of, demolition of 45, 503, 504
  - incombustible material, roofing of, requiring to be made of 500
  - main walls of, regulation of erection or placing of 494, 495, 500, 501
  - notices, posting of, on, prohibiting or regulating 482
  - plans of, deposit of 494, 495
    - ground block, deposit of 496

MUNICIPAL ACT—*Continued.*
- buildings, public, construction of, regulation of, as to doors, etc. 466
  - width of stairs, etc. 466
  - egress from, regulation of 466
  - inspection of, when occupied by public assemblage 466
  - prohibiting and preventing obstruction of halls, etc., in 466
  - resort or amusement, used for, prevention of fire in 471
  - pulling down of, authorizing the 501
  - removal of, regulating the 495
  - roofing of, regulation as to material of which to be composed 500
  - spraying of, during removal or wrecking of 495
  - walls, beams, etc., of, plans of 494, 495
    - fees for inspection and approval of 494, 495
    - regulating the size and strength of 494, 495
  - wooden, additions to, prohibiting erection of 499, 500
    - fences, prohibiting removal of into prohibited areas 499, 500
    - prohibiting erection of 499, 500
  - wrecking of, regulation of 495
    - spraying during 495
- bulletin board posters, licensing, regulating and governing 537
- bureau of municipal affairs, returns to, by auditors 233
  - clerks 226
  - treasurer 229
  - debts of corporation, of 336 ,337
  - failure to make, power of Treasurer of Ontario in case of 236
  - penalties for failure to make 226, 229, 233, 336, 337
- butcher shops, location, erection and use of buildings as 530
- by-laws, aldermen, for changing principle and mode of election of 82, 83
  - authentication of 284, 285
  - building, actions to restrain breaches of 692
  - certificate of clerk, etc., as to sufficiency of signatures to application for 286
    - conclusive that application sufficiently signed 286
  - constitutionality of, cases as to 243 to 251
  - construction of, cases as to 251 to 255
  - default in doing what required to be done by, remedy of corporation for 692

MUNICIPAL ACT—*Continued.*
- by-laws, delegation of powers of council by, cases as to 265 to 268
  - discriminating, cases as to 263 to 265
  - duty of council to pass 299, 300
  - evidence by certified copies of 283
  - expenditure of money, involving, not to be passed after 31st December 277
  - expropriating, repeal of 404
  - extension by Municipal Board of time for passing 300
  - failure to enact, liability of corporation for 45
    - enforce, 36, 37
  - good faith, passed in, not open to question 274
  - good government of municipality, for 274 to 276
  - good in part and bad in part, cases as to 255, 256
  - illegal, enforcement of, liability for 40
  - invalid, liability for acts done under 419, 420, 421
  - money 312 to 328. *See also* money by-laws.
  - necessity for, and other cases as to, cases as to 268 to 273
  - new incorporation, etc., effect of, on 70, 71
    - repeal of, after 70, 71
  - passed in breach of agreement, cases as to 260, 261
  - pits and quarries, as to, injunction to restrain contravention of 501
  - presumption as to validity of, cases as to 273, 274
  - promulgation of 301
    - effect of, if by-law not moved against within prescribed time 301
  - public interest, not passed in, cases as to 259, 260
  - quashing 302 to 311. *See also* quashing.
  - repeal and abrogation of, cases as to 255
  - right to repair and improve highways without, cases as to 256 to 259
  - rules of procedure, etc., for enacting 274
    - failure to conform with, as to passing of 276, 277
  - scrutiny of votes, passing of, to be delayed in case of 300
  - seal, omission to affix to 285
  - *ultra vires*, enforcement of, liability of corporation for 40
  - unreasonable or oppressive, cases as to 261 to 263
  - vested rights, interfering with, cases as to 260, 261
  - village, for erection of 51
    - police, erection of 693
  - voting on 287 to 296
- cabs. *See* vehicles.

MUNICIPAL ACT—*Continued.*
- cab drivers, hours of labour of 554
  - licensing 554
  - licensing, regulating and governing 527
  - regulating charges of 527
- Canada thistles, compelling destruction of 490
  - prohibiting growth of 490
- Canadian Wheelman's Association,
  - danger signals, guide and mile posts, erection of by 660
    - injuries to 660
    - notices on 660
    - obstruction of highway by 660
    - penalties as to 660
- candidates, *see also* election, nomination.
  - agents of, ballot papers, marking of, in presence of 144
    - non-attendance of, effect of 166
    - number of 145
    - paid, not entitled to vote 117
    - polling place, right of, to remain in 145
    - secrecy, oath of, must be taken by 160
      - voting of, duty of, to maintain 159
      - penalty for violating 164
    - vote where stationed, right of, to 138
  - assist agents, may 164
  - disqualification of, for bribery 196, 203, 204.
    - corrupt practices 206, 207
  - duties of agents, may undertake 164
  - presence of, at place at which agent may be present 164, 165
  - present, not to be, at marking ballot paper, under s. 109, 165
- candy, prohibiting sale of on highways, public parks and places 544
- carousals, license fee for 550
  - penalties for breach of by-laws as to 550
    - recovery of 550
  - prohibiting or regulating and licensing 550
- carriages. *See* vehicles.
- carters, licensing, regulating and governing 527
  - regulating charges of 527
- casting vote by clerk 117, 294
- cattle, bridges over highways for 665
  - driving on highways and bridges, regulation of 456, 705
  - sidewalks, driving, etc., of, on, prohibition of 507
  - subways under highways for 665
- celebration of events or matters of national interest or importance, payments for 557, 558

MUNICIPAL ACT—*Continued.*
- cellars. *See also* drainage.
  - cleaning and clearing of, regulating and requiring 465
  - construction of, regulating 465
  - contents of, regulation of manner of disposing of 465
  - levels of, furnishing of 496
    - plans of, deposit of 496
- cemeteries, violation of, prohibiting 473
- census of inhabitants 3, 56, 455
- certificate to entitle to vote at other than proper polling places
  - clerk to give 138
  - voting on production of 138
- cesspools. *See also* drainage.
  - cleaning and clearing of, regulations for and requiring 465
    - disposal of contents of, by corporation 465
      - recovery of expense of 465
  - closing or filling up 490
  - construction of, regulation of 465
  - contents of, manner of disposing of, regulation of 465
- charitable institutions, aid to 455
- charivaries, prohibiting of 464
- chief constable. *See also* police force.
  - appointment of 426
  - breaches of the peace, authority of, to arrest in cases of 428, 429
  - drunkenness, release by, of persons charged with 520
  - member of council, is ineligible to be a 93
  - office of, may be combined with that of high bailiff 426
  - police force, to be a member of 426
  - remuneration of 428
  - suspension of 429
- children, boot blacks, employed as, regulating and controlling 554
  - despatch messengers 554
  - express 554
  - firemen, deceased, of, aid to 498, 499
  - newspapers, vendors of, employed as, regulating and controlling 554
  - platforms of cars, from riding on, prohibiting 496
  - purchasing or taking pledges from, by junk shops, etc., prohibiting 553, 554
  - sleighs, from riding behind or getting on, prohibiting 496
  - small wares, vendors of, employed as, regulating and controlling 554
  - vehicles, from riding behind or getting on, prohibiting 496
  - waggons 496

MUNICIPAL ACT—*Continued.*
chimneys, cleaning of, enforcing the 502
 construction of, regulating the 502
churches, facilitating egress from 466
 garbage collection, assesment of, for cost of 521, 536
cigars or cigarettes, keepers of stores for sale of by retail, licensing, regulating and governing 547, 706
 licenses to, revocation of 547, 706
circus riding, license fee for 550
 licensing and regulating or prohibiting 550
 penalties for infraction of by-laws as to 550
 mode of recovery of 550
city, annexation of township in unorganized territory to a 59
 order for, must be registered 59
 council, composition of 82, 83, 84
 change in 83
 petition for 83
 procedure for making 83
 town, erection of, into a 60, 61
 township, annexation of part of, to a 61
 wards, division of, into 60, 61
claims. *See also* expropriation (compensation).
 counsel prosecuting or opposing, against corporation, ineligible to be member of council 96, 103, 104
 persons having, against corporation 96 to 104
 solicitor prosecuting or opposing 96, 103, 104
clergymen exempt from appointment to municipal office or election 110
clerk, absence, etc., of, appointment of substitute for 225
 administration of oaths by 237
 casting vote on by-laws or questions, not to give 294
 at elections, to give 117
 declaration of office by 236
 deputy returning officers, appointment of, on recommendation of 126
 to perform duties of, where no polling subdivisions 127
 duties of, bonus by-laws, as to 297
 elections, at 120, 121, 122, 124, 126 to 129, 130, 158
 new, as to 124
 general 224
 names of candidates reported for bribery, as to entry of, in book 196
 nominations, as to 128
 police villages, as to 695, 696

MUNICIPAL ACT—*Continued.*
- clerk, duties of, poll, after the close of 155, 156
  - publication and distribution of statement of receipts etc., as to 234
    - transmission of auditor's abstracts, etc., as to 234
  - recount, as to 157, 158
  - registration of money by-laws, as to 327
  - scrutiny, as to 298
  - signatures to applications for by-laws, as to 280
  - villages, erection of, as to 56, 57, 58
  - voting on by-laws, as to 292 to 296
  - fees of, for copies of documents 224
    - services under Ditches and Watercourses Act 238
  - member of council, ineligible to be 93
  - penalties on 226, 327
  - return by 226
  - returning officer for whole municipality, to be 127
  - secrecy, oath of, to take 160
  - vote on by-laws or questions, may 294
    - at elections, may not 117
- clerks of County Courts ineligible to be members of council 96
  - District Courts 96
  - Peace, of the 94
- closet accommodation for workmen 464
- coasting on highways, liability for accidents caused by 37
  - prohibiting and regulating 496
- cold storage, business of, may be carried on 283
- collector, appointment of, 230
  - annual, need not be made 231
  - for local municipalities 230
  - assessor may be 230
  - clerk may not be 230
  - districts may be assigned to 230
  - duties of, regulations as to performance of 230
  - ineligible to be member of council 93
  - member of council may not be 230
  - return by, of defaulters in payment of taxes 230
  - treasurer may not be 230
- collegiate institutes, grants in aid of 519
  - pupils in, expense of attendance of, at universities and colleges 518, 519
    - fellowships, etc., for 518
    - public schools, expense of attendance of, at 518, 519

Municipal Act—*Continued.*
colleges, aid to 518
    egress from, provisions for facilitating 466
    fellowships etc. in, endowing 518
    professors, etc., of, exempt from appointment to municipal office or election 110
    pupils of collegiate institutes and high schools, expense of attendance of, at 518, 519
combustible substances. *See* explosives.
company, shareholders in. *See* shareholders.
compensation. *See* expropriation (compensation).
Conmee clauses, not repealed 712
    repeal of, by proclamation 712
constables, acts of, liability of corporation for 41, 42
    appointment of, by police commissioners 426
        for towns and villages 427
            townships and counties 427
    breaches of peace, authority of, to arrest in cases of 428, 429
    drunkenness, persons charged with, release of, by 520
    duties of 428
    oath by 426
    polling places, attendance of, at 440
    powers of 428
    remuneration of 427
    special, appointment of, at elections 129
        penalty on, for refusal to be sworn or to serve 129
        sworn, to be 160
consumer of public utility not disqualified to be member of council 107
contagious diseases, placarding houses in which, exist 464
    postponement of election on account of 158
    recording, forms for, providing 464
    reporting 464
    spread of, prevention of 464
    use of building as hospital for 38
contested elections
    affidavits, filing of 189
    appeal, when it lies and to whom 196
        withdrawal of 196
    candidates found guilty of bribery, etc., reporting names of 196
    costs, execution for 195, 196
        returning or deputy returning officer may be ordered to pay 191, 192
    decision and papers, return of 195, 196
        to have force of judgment 195
        when final 196

MUNICIPAL ACT—*Continued.*
- contested elections
  - deputy reeve, right to, contestation of 182
  - disclaimer after contestation 197
    - form of 197
    - before contestation 196, 197
      - form of 197
    - communication of, to clerk 198
      - by clerk to council 198
    - costs, effect of, as to 196
  - disqualification, contestation in case of 182
  - election, contestation of 182
    - proceedings for 182 to 194
    - documents, production of, by clerk 191
    - new, order for 194
  - evidence, oral, to be taken where bribery, etc., charged 193
    - taking of, orally 191
  - forfeiture of office, contestation in case of 182, 183
  - intervention in proceedings, costs in case of 192
    - right of 191, 192
  - issue may be directed 192, 193
  - Judge, decision of, when appealable 196
    - final 196
  - limitation of time for contestation 182
  - motions, several, by whom to be heard 191
    - summary hearing of 192, 193
  - notice of motion, fiat allowing 183
    - service of 189, 190
    - several contestations, in case of 190
    - what to be set forth in 188
      - where seat claimed 188, 190
  - objections, stated in notice of motion, relator confined to 190
  - order, amendment of 195
    - clerk or sheriff, when, to be directed to 194, 195
    - drawing up 195
    - effect of 195
    - election, where, avoided 194
    - mandamus, to have the force of 195
    - new election, for 194
    - person elected, for admission of 194
    - removal from office, when, to provide for 194
  - practice and procedure 196, 198
    - rules as to, may be made 198
  - proceedings, entitling 188
  - *quo warranto*, contestation by, abrogation of 198, 199, 200

MUNICIPAL ACT—*Continued.*
contested elections
recognizance, allowance of 187
entering into 183, 187
relator, death of, effect of 187
qualification to be 182, 183
recognizance by 183, 184, 185, 187
status of 185, 186, 187
returning officer, etc., may be made party 192
ordered to pay costs 195
rules, authority to make 198
votes, striking off 193, 194
contractors with corporation ineligible to be members of council 96 to 104
independent, liability of corpoation for acts of 623, 624
contracts. *See* corporations.
by members with corporation are void 109, 110
Control, Board of. *See* Board of Control.
coroners are exempt from appointment to municipal office or election 110
corporations, acquiescence, how far, bound by 8, 269, 467
actions against 410, 411
by 408, 409, 410
to enforce agreements, etc. 419
arbitration, right of, to refer to 393
auditor's fees, liability of, for 14
Board of Health, expenditures by, liability of, for 13, 14
by-laws, failure of, to enact, liability of, for 45
enforce 30, 36, 37
illegal, acts done under, liability of, for 419, 420, 421
ultra vires, enforcement of, liability of, for 40
coasting, accidents caused by, liability of, for 37
commissions are statutory agents of 16, 44
compensation for land expropriated, liability of, to pay 352
injuriously affected, 352
contract, capacity of, to 6
cases as to liability of, apart from 13, 14, 15
implied, from holding over by tenant 7, 8
resolution of council accepting offer, does not form 10
contracts, executed, liability of, on 7, 10, 11, 17
fair wage clause, may include, in 9, 10
formalities, statutory ,necessity for compliance with, in making 6, 15 to 21
Ontario cases, as to liability on 8, 9, 10
Ditches and Watercourses Act, liability of, for unlawful proceedings under 41

MUNICIPAL ACT—*Continued.*
corporations, expropriating by-law, repeal of, liability of, in case of 404 to 407
  fair wage clause, may include, in contracts 9, 10
  fire, demolition of buildings to prevent spread of, liability of, for 45, 503, 504
  highways, liability of, for default in repairing. *See* repair of highways and bridges.
  hospital, liability to patients in, for negligence 28
  independent contractors, liability of, for 623, 624
  inhabitants of municipalities, are 6
  land, oral contracts of, in respect of, partly performed 7
  light, statutory authority of, to contract for supply of 10
  lock-up, liability of, to persons imprisoned in, for condition of 436
  militia, expense of calling out, liability of, for 14, 223, 224
  names borne by 46
  negligence, liability of, for 26 to 39
  nominee of. *See* nominee of corporation.
  nuisances, liability of, for 26 to 39
  officers and servants of, liability of, for acts of 34, 43
  paupers, relief of, liability of, for 14
  physicians, fees of, liability of, for 13, 14
  police constables liability of, for acts of 41, 42
  powers of, to be exercised by councils 46
  promissory notes, authority of, to make, etc. 340
  seal, necessity for use of, in contracting by 6
  sewers, cases as to, British Columbia 24, 25
    New Brunswick 25
    Nova Scotia 25
    Ontario 24
    Quebec 25, 26
    Saskatchewan 26
   injury caused by, liability of, for 24 to 26
  small-pox patients, liability of, for care of 43
  Snow Fences Act, liability of, under 9
  solicitor, employment of, by 11, 12, 18, 19, 20
  statutory authority, not liable to actions for acts done under 22, 23, 24, 34, 39, 354
  surface waters, liability of, in respect of 39, 40
  trading, contracts by 6
  torts, liability of, for 21 to 46
  water, statutory authority to contract for supply of, to inhabitants 10
  water, no statutory obligation on, to supply, free from sand 41

Municipal Act—*Continued.*
corporations, Workmen's Compensation Act, liability of, under 45, 46
corrupt practices, acts constituting 205, 206, 207
disqualification for 196, 206, 207
penalty for 206, 207
when not recoverable 208
sections, posting at polling places 207
council, city, composition of. *See* city.
county county.
discretion of, not subject to judicial control 46 to 50
meeting, adjournment of 215, 216
ballot, vote at, not to be taken by 215
exclusion of persons from 211
first, business, when, may be proceeded with at 209
place of holding 66, 210, 211
time 66, 209
head to preside at 212
notice of 212, 213, 214
ordinary, to be open 211
organization of 209, 210
presiding officer at 214
special 212, 213, 214
closed, may be 214
notice of 212, 213, 214
place of holding 214
summoning of 212, 213, 214
to be held on 15th December in certain municipalities 234
votes at, to be announced openly 214
jurisdiction of, confined to municipality 244
new incorporation, what, to act in case of, until new council organized 80
powers of 46 to 50, 692
to be exercised by by-law 244, 245
proceedings begun by, completion of, by succeeding 277
quorum of 211, 212
records and documents of, certified copies of, evidence to be 225
fees for furnishing 224
furnished, to be 224
inspection of 224
security of treasurer, duty to enquire into 226, 227
status of 46 to 50
town, composition of. *See* town.
township township.
payment for attendance of members of 555, 556
services 557

MUNICIPAL ACT—*Continued.*

- council, vacancy in, how caused 173 to 176
      - filled 173 to 181
    - proceedings to declare 173 to 176
  - village, composition of. *See* village.
    - payment for services of members of 557
- councillors, election of, for new township 66
- counsel employed in prosecuting or opposing claims ineligible to be member of council 96, 103, 104
  - employment of, to conduct investigation 242, 243
  - paid by salary, employment of 238
    - right of corporation to costs, where 238, 239
- county, annexation to, of new village 58
    - townships in unorganized territory 68
  - council, certificate, filing of, before member takes his seat in 210
    - composition of 82
    - junior township, separation of, from union, by 68, 69
    - members of, payment of, for attendance, etc. 556, 557
      - services 557
    - pro-mayor, right of, to sit in (Que.) 82
    - village, erection of, by 51
        - what 51
      - by-law for, duty of, to pass 52
      - police, erection of, into a village, by 59
          - by 693
        - incorporation of trustees of, by 709
  - hall 210, 430
  - territory annexed to, not to form part of, for representation in Legislative Assembly 63, 64
  - towns, existing, continued 429
- court house, buildings for joint use of county and city or separated town, agreement as to 433, 434
  - city, care of, to be regulated by council 432
    - erection, enlargement or improvement of 430
    - fuel and other supplies for 430
    - repair of 430
  - county, arbitration as to contribution by city or separated town in respect of 433, 434, 435
    - asset, not to be considered, in adjustment of assets 76, 77
    - caretakers of, appointment of 431
    - city and separated town, to be, for 430
      - contribution by, to erection, etc., of 432
        - new arrangement as to 435

MUNICIPAL ACT—*Continued.*
  court house, county, erection, enlargement and improvement of 430
    expenditure for erecting, etc. 432
      arbitration as to 433
    fuel and other supplies for 430
    furniture of, insurable interest in 434
      liability to pay for 432
    insurable interest in 434
    land in city or separated town, acquiring, for 430
    Law Association library, accommodation for, in 431
    providing and maintaining, by county 429
    site for, determination as to, by arbitration 434
    sufficient for purposes of city and separated town, to be 430
    use of by city or separated town, compensation for 435
      arbitration to determine 435
  Courts of Justice, officers of, accommodation for 431
      exemption from appointment to office or election 110
      fuel, light, etc., for 431
      furniture for 431
      typewriting machines for 431
    provincial, accommodation for 431
      fuel, light, etc., for 431
      furniture for 431
  Court of Revision, chairman of, additional allowance to 556
  cows, keeping of, regulation of 464
    prohibiting 464
  cranes, construction, regulation and inspection of 459
  crimes, rewards for discovery, etc., of 455, 456
  Crown Attorney, Toronto, offices, fuel, light, etc., to be provided for, by Toronto 432
  Crown Attorneys ineligible to be members of council 94
  cruelty to animals. *See* animals.
  culvert, bridge and, difference between 1
    drains, over 490
    toll roads on, repair of 649
    watercourses, over 490
    what is a 1
  dance halls, public, location, erection and use of buildings as 531
    what are to be deemed to be 531
  dangerous places, regulations as to 679
    substances. *See* explosives.

MUNICIPAL ACT—*Continued.*
- days, clear computation of 94, 95
  - what are 94, 95
- dealers in second-hand goods, cancelling license of 537, 538
  - "dealers in second-hand goods," meaning of term 538
  - fee for license of 538
  - licensing, regulating and governing 537, 538
  - minors, sale to, by 553, 554
  - "second-hand goods," meaning of term 538
- debentures, application of sinking fund to redemption of 333
  - approval of, by Municipal Board 324
    - certificate of, form of 326
    - proceedings for obtaining 324, 325
  - approved of, by Municipal Board, to be valid and binding 325, 326
  - borrowing on, pending sale 339, 340
  - certificate of ownership of 339
    - endorsement on 339
      - entry of, in debenture registry book 339
      - transfer of, after 339
  - change in mode of issue of 315, 316
  - coupons on 337
    - manner of execution of 337
  - date which, are to bear 316
  - execution of, manner of 337
  - extension of time for issue of 316
  - issue of, under section 500, 692
  - less than $100, for, not to be made 340, 341
  - local municipality of, guaranty of, by county 528
  - money borrowed, for 283
  - payable how, may be made 338
  - redemption of, by Provincial Treasurer 334
  - unimpeachable, when, become 338, 339
  - validity of, not open to question after approval by Municipal Board 326
  - when to be issued 316
    - payable 313
- debts. *See also* money by-laws.
  - and liabilities, adjustment of, on new incorporation, etc. 72 to 78
    - creditors, liability to, in respect of 75
    - re-opening agreement as to 75

MUNICIPAL ACT—*Continued.*
- debts, returns as to 336
  - penalty for failure to make 337
  - separate accounts of, to be kept 331
- declaration, election, of result of 124, 158
  - incorporation of township, of 67
  - office, of, new election on neglect to make 176, 177
    - penalty for not making 237
      - recovery of 237
    - by whom to be made 236
  - qualification, of, candidates by 122, 123
    - township councillors by 236
    - trustees of police village by 236
    - penalty for not making 237
  - result of voting on by-law, of, 295
  - secrecy, of 160
- dedication of highways. *See* highways.
- deep waters, regulations as to 679
- defaulters' list, certificate that taxes since paid by persons entered on 115, 116
    - to be filed and noted on 116
  - copies of, to be furnished to applicants 136
    - payment for 136
  - deputy returning officers to be furnished with 136
  - polling subdivision, to be made for each 136
  - preparation of 135
  - verification of 135
  - voters on, not entitled to vote unless taxes since paid 115, 116, 117
- deputy reeve. *See* reeves, deputy.
  - returning officer, appointment of 126
      - for taking votes on by-laws, etc. 287
      - when to be made 126
    - authority of, to arrest 129
    - ballot boxes, duty of, to provide 129
    - conservator of the peace, to be a 129
    - declaration, to make 236
    - duties of, ballot boxes, as to 154, 155
      - after close of poll 145 to 155
      - at poll 139 to 145
      - posting bribery sections, as to 207
    - failure of, to attend at polling place, etc., 128
      - initial ballot paper, penalty for 163
        - recovery of 164

MUNICIPAL ACT—*Continued.*
deputy returning officer, failure of, perform duties, penalty for 163
recovery of 163
miscounting ballots, etc., by, penalty for 163
recovery of 164
oath of, after poll 155
secrecy, to take 160
to be taken by, after delivery of ballot boxes to clerk 154
party to *quo warranto* proceedings, may be made 191, 192
penalties on 161 to 164
poll clerk to act as, when 128
special constables, appointment of, by 129
violations of secrecy, to report 160
vote, may, at polling place on production of certificate 138
derricks, erecting and renting and inspection of 459
despatch messengers. *See* children.
deviations, boundary lines on 595, 596, 597
disputes as to location of 659
necessity for 659
proportions of cost of opening, etc., 659
of highway, in lieu of 659
to be determined by Municipal Board 659
use of existing highway in lieu of 659
unorganized territory, in, plans of, to be made and filed 689
directions to voters, forms of 133, 294
number of, to be delivered to deputy returning officers 133
placarded in compartments, to be 133
outside polling place, to be 133
voting on by-laws, etc., for 294
disclaimer. *See* contested elections.
diseases. *See* contagious diseases.
disorderly houses, suppression of 464
disqualification, candidates found guilty of bribery, etc., of 203, 204
contractors with corporation ineligible to be members of council 96 to 104
failure to levy sinking fund, for 332
lessees of corporation property for 21 years not ineligible to be members of council 105, 106
misapplication of sinking fund, for 332

Municipal Act—*Continued.*
- disqualification, newspaper proprietors being contractors not ineligible to be members of council 106, 107
  - paid commissioners, etc., not ineligible to be members of council 107
  - persons having property exempt from taxation not ineligible to be members of council 106
    - other, ineligible to be members of council 93 to 96, 104, 105
  - public utility, consumer of, not ineligible to be member of council 107
  - shareholders in company being, not cause of 105
  - taxes, non-payment of, in respect of 104, 105, 464
- distance, how measured 53, 54
- distilleries, prohibiting or regulating erection or continuance of 473
- distinguished guests, entertainment and reception of 557
- district, meaning of term, in part 1, 51
  - village, annexation of, to 59
    - erection of, into a 51, 52
      - adjustment of assets, etc., on 75, 76
- district towns, existing, continued 429
- disturbances of the peace, prohibiting 464
- Ditches and Watercourses Act, corporation, liability of, for defects in proceedings under 41
  - fees of clerk under 238
- Division Court, bailiffs of, ineligible to be members of council 94
  - clerks 94
  - use of court house for sittings of 433
- Dog Tax and Sheep Protection Act, liability to pay compensation under 29
- dogs, kennels for, location, erection and use of buildings as 530
  - licensing of 497
  - registration of 497
  - running at large, killing of 548, 549
    - prohibiting or regulating 548
    - seizing and impounding 548
    - what to be deemed to be 548, 549
  - selling of, impounded 548
- drainage, cellars, of 465
  - cesspools, of 465
  - drains, bridges over, erection and mode of construction of 490
    - construction and maintenance of 456
    - culverts crossing erection and mode of construction of 490
    - obstructions in 490, 504, 505
  - earth closets, of 465

MUNICIPAL ACT—*Continued.*
drainage, grounds, of 465
    land, acquiring for drainage and sewerage purposes 497, 498
    private drains, alteration, etc., of 465
    privies, of 465
    privy vaults, of 465
    regulations as to 465
    sewage disposal works, borrowing for extension of 492, 493
            establishment and maintenance of 456
        pipes or conduits for conveyance of, laying in county highways 528
        purification, etc., of, works for 456
    sewerage, regulations as to 465
        works, borrowing for extension of 492, 493
            management of, by commission 524
    sewers, construction and repair, etc., of 456, 481
        debts for, when to be payable 313
        diversion, alteration and stopping up of 456
        extension of, into adjacent municipality 456
        obstructions in, removal of 504, 505
        outlet for, providing 481
        rents for, charging 507
            commutation of 507
            lien for 507
    sinks, of 465
    vacant lots, of 465
    water closets, of 465
            filling up 490
    watercourses, bridges over 490
            construction and maintenance of 456
            culverts crossing 490
            diversion, alteration and stopping up of 456
            obstruction of 490
    wet lands, draining of 535
draymen, licensing, regulating and governing 527
    regulating charges of 527
driftwood in streams, removal of 594
            arbitration as to 594
drill shed for militia or volunteer corps, acquiring land for 498
drives, acquiring land for 461
    establishing and laying out, etc. 461, 462
drunk and disorderly persons found in highway or public places, restraining and punishing of 490
            a public place, committal of, to industrial farm 437

MUNICIPAL ACT—*Continued.*
drunkards, habitual, committal of, to inebriate asylums 437
drunkenness, preventing 490
release by police constables of persons charged with 520
dry cleaners, licensing, regulating and governing the business of 544
dualin. *See* explosives.
dwelling houses, construction of, in narrow streets, lanes or alleys 674, 675
erection manner of 674, 675
prohibiting the 674, 675
or occupation of, regulation of 674, 675
narrow streets, lanes or alleys, alteration of buildings in, to make them 674, 675
vacant land to be attached to, in narrow streets, lanes or alleys 674, 675
dynamite. *See* explosives
earth closets. *See also* drainage
cleaning and clearing of, regulations for and requiring 465
disposing of contents of, by corporation 465
recovery of expense of 465
construction of, regulation of 465
contents of, manner of disposing of, regulation of 465
use of, requiring 465
easements. *See* expropriation.
eating houses, license fee for 545
revocation of, for 545
licensing and regulating 545, 546
limiting number of 545
Education, Board of. *See* Board of Education
election, acclamation, by 120, 124
contagious disease, postponement of, on account of 157
contested. *See* contested elections.
declaration of result of, by clerk 156, 157
deputy returning officers for, appointment of, for subdivisions 126
documents, destruction, etc., of, penalties for 163
recovery of 163
endorsement on packet containing, evidence of contents 166
production of 166
epidemic disease, postponement of, on account of 157
expenses, payment of 173
invalid, not to be, for certain mistakes, etc., 166 to 173

MUNICIPAL ACT—*Continued.*
election, new, in case of failure to elect requisite number of councillors 124
  to fill vacancies 124, 176, 177, 178
  where election adjudged invalid 194, 195
    order for, to whom to be directed 194, 195
 nomination of candidates, at. *See* nomination.
 officers, penalties on, for wilful alteration, etc., of voters' list, etc., 161
   recovery of 161
  for contravention of Act 164
 place of holding 118, 119, 126
 poll clerks for, appointment of, for subdivisions 126
 polling places, at, appointment of, for 126
 secrecy, preservation of, at. *See* secrecy of proceedings.
 returning officers for wards, appointment of, for 126
 riot, interruption of, by 157, 158
 tavern, not to be held in 126
electors, persons disqualified to be 93 to 109. *See also* disqualification.
  qualified to be 87 to 92. *See also* qualification.
 questions, submitting, to 456, 457
 voting by, on certificate 138
  where and how often 137, 138
electric light works, borrowing for extension of 492
 debts for, when payable 313
 police villages, powers of, as to 711
electrical workers, examining, licensing and regulating 546
electricity, pipes, etc., for wires, etc., authority to lay down 467
  constructing or laying down 476, 477, 478, 479
 poles, etc., regulating the erection, etc., of 476
  for supporting wires, erection of 477, 478, 479
 telegraph poles, etc., authority to erect 467, 476
 telephone 467, 476
 towers for support of wires, erection of 477, 478, 479
 use of corporation's pipes, etc., agreements as to 477, 478, 479
 wires and apparatus for transmission of, inspection of 502
  regulation of 502
  removal of 502
  repair of 502
elevators, construction of, regulation of 498
 floating, erection and renting 459
 licensing 498
 operation of, regulation of, the manner of, 498
employees, corporation, ineligible to be members of council 93

MUNICIPAL ACT—*Continued.*
- engineers, appointment of 525
- epidemic, postponement of election on account of 157
- estimates, yearly, preparation of 329, 330
- evidence, stenographic reporter, taking of, by 4
- exemption, bonus granting, from taxation 443, 449
  - election, from 110
  - municipal office, from appointment to 110
  - taxation, from, not cause of disqualification 106
    - voting by members having 107, 108, 109
- exhibitions, agricultural, acquiring land for holding 457
    - buildings for, erection and maintenance of 457
    - licenses, restriction as to granting certain, while, being held 550
    - leasing land not required for immediate use for 457
    - management of 457
  - farming, for the promotion or improvement of, associations for holding 457
    - land, granting, in aid of 457
    - money, granting or lending, in aid of 457
  - fat stock, association for holding 457
    - land, granting, in aid of 457
    - money, granting or lending, in aid of 457
  - hire or gain, held for, prohibiting location of 549
    - regulating and licensing 549
    - revocation of license of 549
  - horticultural, acquiring land for holding 457
    - building for, erection, maintenance and management of 457
    - leasing land not required for immediate use for 457
  - industrial, acquiring land for holding 457
    - buildings for, erection, maintenance and management of 457
    - leasing land not required for immediate use, for 457
  - live stock, association for holding 457
    - land, granting in aid of 457
    - money, granting or lending in aid of 457
  - menageries, of, by-laws for prohibiting or regulating and licensing 550
    - license fee for 550
    - penalties for infraction of by-laws as to and mode of recovery of them 550

Municipal Act—*Continued.*
- exhibitions, wax-work, of, by-laws for prohibiting or regulating and licensing 550
  - license fee for 550
  - penalties for infraction of by-laws as to and mode of recovery of them 550
- explosive substances. *See* explosives
- explosives
  - benzine, regulations as to 469
  - dualin 467, 468, 469
  - dynamite 467, 468, 469
  - gasoline 469
  - gunpowder 467, 468, 469
  - magazines for storing certain, erection and maintenance of 468
    - regulations as to 468, 469
    - support of, by fees 468, 469
  - naphtha, regulations as to 468
  - nitro-glycerine 467, 468, 469
  - petroleum 468
  - substances, dangerous or combustible, regulations as to 468
    - inflammable or explosive 468
- express messengers. *See* children
- expropriate, power to acquire includes power to 5
- expropriation, by-laws for, repeal of, effect of 404 to 407
    - liability of corporation in case of 404 to 407
  - when, deemed to be repealed 404
  - compensation, access, interference with, for 379 to 384
    - advantage from contemplated work, deduction from, for 384, 385
    - arbitration, to be determined by 352
    - authorized works, loss arising from user of, for 370
    - award for, effect of 386, 387
    - buildings and erections, for 369
    - claim for, barring of 389, 392, 673
      - exception as to claim by infant or lunatic 389, 392
      - extension of time for making 392
        - appeal from order allowing 392
      - how to be made 389
      - notice of, to be given 389
        - unnecessary in case of easements 389, 390
        - infant or lunatic 389

MUNICIPAL ACT—*Continued.*

- expropriation, compensation, claims to, or incumbrances on land 390
  - upon, determination of 391
  - compulsory taking, additional allowance for 372 to 375
  - costs of proceedings, by whom to be paid 391
    - discretion as to 391
  - damage of temporary character, for 378
    - remoteness of 379
  - due, meaning of 356, 357
  - fencing, for, to be included in 352
  - goodwill, for 367, 368
  - injurious affection, for 352, 353, 354, 375 to 391
    - determination of, by arbitration 352
  - interest in land, nature of, to be compensated for 354 to 356
  - interest on 372
    - money paid into court for 390, 391
  - intrinsic value as basis of 366, 367
  - land expropriated, for 352, 354 to 375
    - determination of, by arbitration 352
    - taken by mistake in opening road allowance, for 673
      - claim to, when barred 673
  - lavatory in highway, construction of, for 385, 386
  - lessees or tenants, to 370, 371
  - market value, as basis of 364 to 366
  - miscellaneous cases as to 388, 389
  - other premises, expenses for obtaining, for 371, 372
  - passing over land in obtaining road materials, for 680
  - payment into court of 390
    - effect of 391
    - vesting order may issue after 391
  - reinstatement as basis for 368, 369
  - removal, expenses of, for 371

MUNICIPAL ACT—*Continued.*
- expropriation, compensation, reversionary interests, for 370
        - severance, damage from, to be allowed 352, 353
            - cases as to 387, 388
        - special adaptability, allowance for 359 to 364
            - value, 357, 358, 359
        - timber, gravel, stone and road materials taken, for 679, 680
    - description of land to be contained in by-law for 351
    - easement, nature and extent of, to be stated in by-law for 351
    - entry upon land after by-law for 352
        - necessity of fixing or paying compensation before 386
    - notice of intention to expropriate 392
        - service of 392
    - owner, appointment of person to act for 390
    - plans, etc., may be filed in office of clerk 392
    - powers of 344 to 351
    - vesting order, issue of 391
- factories, egress from, provisions for facilitating 465, 466
    - fire, accidents by, securing against in 471
    - location, erection and use of buildings as 530
- fair wage clause, municipal corporation may include in contracts 9, 10
- fairs, public, by-law to authorize holding of 538
    - notice of, to be given 538
    - petition for 538
    - regulations for governing, prescribing 538
        - appointment of person to see that, carried out 538
- farmer's son, qualification of voter as 112
- farming, exhibitions for the promotion or improvement of 457. *See also* exhibitions.
- faro-bank 473. *See also* gambling
- fat stock exhibitions 457. *See also* exhibitions
- fee for certificate of compliance with regulations regarding any trade, etc., may be imposed 281
- fellowships, scholarships, exhibitions, etc., endowing 518
- fence viewers, appointment of 460
- fences. *See also* expropriation
    - barbed wire, are not necessarily nuisances 470
        - provisions as to 470
    - compensation for increased expense of 470

MUNICIPAL ACT—*Continued.*
- fences, division, apportioning cost of 470
  - recovery of cost of 470
  - highways, on, building and maintaining of 470
    - prohibiting building or maintaining of, on 685
  - lawful, prescribing height and description of 470
  - Line Fences Act to apply to, in absence of by-law as to 470
  - pulling down of dangerous 475, 476, 501
  - renewing or repairing of 501
  - snow 9, 470, 528
  - water gates to be maintained where drains or watercourses crossed by 471
  - wooden. *See* buildings
  - worm, provisions as to 685, 686
- ferry boats, grants for maintenance and operation of 457
- finances, commission to enquire into, appointment of 337
  - expense of 337
- fire, accidents by, securing against, in certain buildings 471
  - arms, prohibiting or regulating discharge of 471
  - apparatus dangerous in promoting, construction of 502
    - removal of 502
  - assistance of persons present at, enforcing the 504
  - brigade, members of, exempt from appointment to municipal office or election 110
    - gratuities to 498, 499
    - superannuation and benefit fund for, and their wives and families 524, 525
  - buckets, inspection of 503
    - requiring, to be provided 503
  - companies, members of, exempt from appointment to municipal office or election 110
    - promoting, establishing and regulating 498
  - conduct of persons present at, regulating the 504
  - demolition of buildings to prevent spread of 503, 504
  - engines and appliances, purchase of 457, 700
    - right of way of, on highway 498
  - engineers, appointment of 498
  - escapes, requiring, to be provided 471
  - men, appointment of 498
    - widows and children of deceased, aid to 498, 499
  - open air, prescribing precautions to be observed in setting, in 471
    - times when, may be set in 471
  - places, construction of, regulating the 502
    - removal of 502

MUNICIPAL ACT—*Continued.*
- fire, prevention of, by-laws for 499 to 504
  - enforcing 503
  - officers, entry of, to see if, obeyed 503
  - powers as to, of township councils 534
  - provisions for, in police villages 706, 707, 708
  - property, preservation of, at 504
  - suppression of, by-laws as to 503, 504
  - things dangerous in promoting, construction of 502
    - removal of 502
  - warden, appointment of 498
  - works, prohibiting or regulating setting off of 471, 472
- flooding, works for prevention of 458
- flues, construction of, regulating the 502
  - removal 502
- food, animals intended for, slaughter of 482
  - delivery and exposure for sale of certain articles of, regulation of 472
  - inspection of certain articles of human 472
  - inspectors of human, appointment of 472
  - tainted or unwholesome, seizure and destruction of 472
- food and fuel business, borrowing for 473
  - assent of electors to, not required 473
  - depots, etc., for buying and storing, establishment of 472
    - land, acquiring, for business 472
  - Lieutenant-Governor, approval of by-law for establishing, business 472
  - Municipal Board 472
  - officers and servants for managing, business 472
  - regulations for carrying out powers as to, business 472
  - selling, to dealers and residents 472
  - tickets, etc., use of, by vendors of articles of 505
  - unslaughtered animals, seizure of, to prevent their use as 534
- footpath, riding or driving over 678
  - setting apart, in highway 678
- forges, location, erection and use of buildings as 530
- formalities, statute prescribed, necessity for observance of in making contracts 6, 15 to 21
- forms, approval of, by Municipal Board 712
  - use of approved 712
- foxes, bounty for destruction of 458
- franchise, time for submitting by-law for granting 288
- fresh meat, sale of, in less quantity than quarter carcass, fees for licenses for 546
  - places for, regulation of 546

MUNICIPAL ACT—*Continued.*
  fresh meat, sale of, prohibiting, in less quantity than quarter carcass by unlicensed persons 546
  fruit, prohibiting sale of, on highways and in public parks and places 544
  fuel business. *See* food and fuel business
  gambling devices, seizing and destroying 473
    houses, suppression of 473
  gaol, city, care of, to be regulated by council 432
    erection, enlargement or improvement of 430
    food, fuel and other supplies for 430
    repair of 430
    surgeons for, appointment of 539
   county, arbitration as to contribution by city or separated town in respect of 433, 434, 435
    asset, not to be considered, in adjustment of assets 76, 77
    care of 430
    city and separated town, to be for 430
      contribution by, to erection, etc., of 432
      new arrangement as to 435
    erection, enlargement and improvement of 430
    expenditure for erecting, etc. 432
      arbitration as to 433
    food, fuel and other supplies for 430
    furniture of, insurable interest in 434
      liability to pay for 432
    insurable interest in 434
    keeper of, appointment of 430
      dismissal of 431
      fees, etc., not to be taken by 431
      salary of 430
    land in city or separated town may be acquired for 430
    lock-up, use of, as a 436
    officers of, appointment of 430
      fees, etc., not to be taken by 431
      salaries of 430
    prisoners, contribution by city or separated town to cost of maintenance of 435
      arbitration as to 435
    providing and maintaining 429
    repair of 430
    sheriff to have care of 430
    site for, to be determined by arbitration 434
    sufficient for city and separated town as well as county, to be 430

MUNICIPAL ACT—*Continued.*
gaol, county, surgeons for, appointment of 539
use of, by city or separated town, compensation for 435
arbitration to determine 435
gaolers, ineligible to be members of council 93
garages, erection, location and use of, regulation of 509
public, license fees for 526
licensing owners of 526
penalties for breaches of by-laws as to 526
prohibiting or regulating and controlling the erection of 532
regulating owners of 526
what included in term 526, 527
garbage, ashes, and other refuse, collection, removal and disposal of 520
contracting for 520
corporation, by 521
expense of, special rate to pay 521
special rate for, collection of, no land exempt from 521
systems for, establishment of 520
debts for, when payable 313
works for, erection and maintenance of 520
gas pipes or conduits, laying of, under county highways 528
works, prohibiting or regulating erection or continuance of 473
gasoline, businesses in which is used, licensing 544
regulating and governing. *See* explosives
goats, keeping of, prohibiting 464
regulating 464
goodwill. *See* expropriation (compensation)
grain elevators, bonus for establishment of 445
vote required for 296, 297
gratuities, fire brigade, to members and officers of 240, 241
gravel, acquiring land to get, from 679
compensation for passing over land to obtain 679, 680
determination of, by arbitration 679, 680
entering on land, to search for 679, 680
searching for and taking 679, 680
graves, violation of, prohibiting 473
grounds, filling up of 465. *See also* drainage
guaranteeing debentures 314, 342, 528
payment of money borrowed by bridge company 681

Municipal Act—*Continued.*

- gunpowder 467, 708. *See also* explosives
- habitual drunkards, committal of, to inebriate asylums 437
- harbours, aid in construction of 458
  - dues on vessels, etc., using, imposition and collection of 459
  - injuring, etc., of, prohibition of 459
  - preserving 459
  - removal of obstructions from 459
  - vessels, etc., in, regulation of 459
  - wharves, etc., in, erecting and renting 459
- hawkers and pedlars, county by-law as to, not in force in town having by-law 542
    - covers county boundary line 544
  - fee for license as 542
    - discriminating, may be imposed 542
  - hawkers, persons included in term 541, 542
  - license not required by, in certain cases 540
    - licensee to carry 542
      - exhibit on demand 542, 543
    - person refusing to exhibit, to be arrested 543
  - licenses, providing municipal officers with 544
    - regulations as to issue of, by municipal officers 544
  - licensing, regulating and governing 539 to 544
  - onus of proving that license not required, on whom to rest 541
- head of council, justice of the peace, *ex officio*, to be 422
  - powers and duties of 212, 222, 223, 224, 231
  - presiding officer of council to be 212
  - remuneration of 223
  - statement of treasurer under s. 228 delivered to auditors to be read by 229
  - vote, may 214
- Health, Board of. *See* Board of Health
- heat, contracts for supply of 699
- high bailiff, appointment of, for city 426
    - county 428
  - duties of 428
  - member of council, ineligible to be 93
  - office of, may be combined with that of chief constable 426
  - powers of 428
  - remuneration of 428
  - suspension of 428
- high schools. *See* collegiate institutes

Municipal Act—*Continued.*

highways, access to, interference with, 667, 668
compensation for 667
interfering with, conditions on which by-laws, may be passed 667, 668
abandonment of, by county council 586, 587
acquiring of, includes acquiring part of 567, 568
adjacent local municipality, in, assumption of by city or town 586
aid to other municipal corporations in respect of 675, 676, 677
allowances for roads to be 568
alterations of certain 665, 666
altering 662, 663
animals, driving of, on certain, prohibition of 509, 510
annexed land, abutting on, forming boundary 583
areas under 677
assumption of, by city or town 586
county 585
includes assumption of part of 567, 568
bands, playing of, in 553
banks of rivers or streams, along or leading to 665
bicycle paths in, setting apart 678
blocking up of 512
boulevards, setting apart part of, for 665, 677
boundary line, jurisdiction over 582
maintenance of 592, 593, 594
agreements as to 584
lines of, marking, settling and surveying 505, 535, 536
bridges on or over. *See also* bridges
over, permitting landowners to construct, etc., 677.
term, includes certain 2
building operations, restoration of, after 526
use of during 526
fee for 526
by-laws respecting, approval of, by Judge 666
confirmation of, by county council 666, 667
by whom to be passed 568
Canadian Wheelman's Association, rights of, as to 660
carriage ways, setting apart part of, for 665
compensation, land taken by mistake in opening road allowances as, for 673
claim to, when barred 673
corporation of adjoining municipality, aid to, in respect of 675, 676, 677
county 676, 677
township 675, 676, 677

MUNICIPAL ACT—*Continued.*

- highways, council, sanction of, required for laying out 673
  - Crown, vested in, not to be interfered with 665
  - dead horses, hauling of, on, prohibition of 476
  - dedicated roads to be 568, 571 to 579
  - deviations of, disputes as to 659
      - determination of, by Municipal Board 659
    - certain roads to be boundary 595, 596, 597
  - disputes as to, action to be taken where jurisdiction joint 657
      - arbitration as to 657
    - deviations 659
    - liability as to, determination of 655
    - proportion of cost of keeping in repair, arbitration to determine 655
    - work to be done in opening, etc., township boundary, determination of 657, 658, 659
  - diverting 662, 663
  - driving, etc., on, regulation of 456
  - electric light and power poles, etc., erection of, on county 528
  - encumbering, etc., of 685
  - establishing 660, 661, 662
    - allowances for road not reserved on township boundaries, in case of 655
    - arbitration in case of dispute as to 656
    - land, acquiring for 655, 656
    - procedure for 655, 656
  - fence, lawful, enclosed by, possession of 669
  - fences on, prohibiting building or maintaining of 685, 686
  - fire engines and appliances, right of way of, on 498
  - firewood, etc., deposit of, on 685
  - footpaths in, setting apart 678
  - gas pipes, etc., laying of, under county 528
  - grade of, alteration of 30 to 34
  - Indian lands, roads passing through, to be 568, 571
  - judicial districts, in, powers of Lieutenant-Governor as to 689
  - jurisdiction over 580, 581, 582
    - county council, of, over what 580, 581
  - laying out 660, 661, 662
  - leasing stopped up 663, 664, 665
  - lock shoes, regulating use of, on 529
  - Minister of Public Works, declared not to be under control of 584
  - mistakes in opening 673
  - musical instruments, playing of, in 553

MUNICIPAL ACT—*Continued.*

- highways, names of, affixing at corners 505, 535, 536
    - changing 505, 535, 536
        - procedure for 505, 535, 536
    - giving, to 505, 535, 536
  - narrow, dwelling houses on 674, 675. *See also* narrow streets, etc
  - night soil, hauling of, on, prohibition of 476
  - notice of intention to exercise powers as to 670, 671
  - obstructions on 685
    - removal of 685
  - occupation of, by buildings through inadvertence 525, 526
    - privilege to maintain, grant of, 525, 526
      - fee for and recovery of 526
      - charge on land, to be 526
  - offal, hauling of, on, prohibition of 476
  - offensive matter, hauling of, on, prohibition of 476
  - Ontario Motor League, rights of, as to 659, 660
  - Ordnance, laid out by, not to be interfered with 665, 666
  - parades and processions on, regulation of 555
  - police villages, powers of, as to 705, 706
  - projections into or over, removal of 685
  - public waters, are 579
  - public works not to be interfered with in opening, etc. 666
  - Quebec cases as to 559 to 565
  - racing, etc., on, prohibiting 456
  - record of, to be kept 506
  - repair of. *See* repair of highways and bridges
  - residential streets, establishing of, as 523, 524, 536
    - building line, on 523, 524, 536
  - roads laid out under statutes to be 568, 569
    - on which public money expended to be 568
  - rubbish or refuse, throwing, etc., on 686
  - selling stopped up 663, 664, 665
  - sewage pipes, etc., laying of, under county 528
  - shores of lakes or other waters, on 665
  - side lines in double front concessions, connecting 672, 673
  - sidewalks, setting apart part of, for 665
  - site of, where substituted roads opened in lieu of them, ownership or disposal of 686, 687, 688
  - sleighing, season of, keeping open, during 535
    - putting stone, etc., on during 688
  - soil and freehold of, in whom vested 579, 580
  - speedways on, 533, 534. *See also* speedways
  - statute labour, roads on which, usually performed, to be 568, 570, 571

MUNICIPAL ACT—*Continued.*

highways, stone, etc., putting on, during period of sleighing 688
  stopping up 663, 664, 665
  subways for cattle under 665
  telegraph poles, etc., erection of, on county 528
  telephone poles, etc., 528
  timber on, preserving and selling 678, 679
  tires of vehicles used on, regulation as to 509, 510, 529
  traction engines, use of, on, prohibiting 509, 510
  traffic on, except in one direction, prohibiting 509, 510
    regulation of 529
    heavy, on, prohibiting 509, 510
  trees on, cutting down on either side of 683, 684
    planting and preserving 681, 682
    preserving and selling 678, 679
  unorganized territory, in, opening and making 689
  water pipes, etc., laying of, under county 528
  watering, contracting for 463
  widening 662, 663
  width of 673, 674
historical societies, aid to 518
hoists, construction and erection of, regulating and inspecting the 474, 498
  inspection of 474, 498
  inspectors of, appointment of, 474
  licensing of 498
  operation of, manner of, regulation of the 498
hook and ladder companies, promoting, establishing and regulating of 498
horns, blowing of, prohibiting or regulating the 474
horse thieves, rewards for conviction of 519
horses, hauling of dead, on highways 476
  hours of labour of persons employed by owners of 554
  kept for hire, keepers of, fares to be charged by, regulation of 527, 528
    regulations for enforcing payment of 528
  sidewalks, driving, etc., of, on 462, 463, 507
  stables for, location, erection and use of buildings as 530, 531
  vehicles, not drawn by, regulating use of highway by 520
horticultural exhibitions 457. *See also* exhibitions
hospitals, aid for erection of 459, 460
  animals, for 530
  bonus in aid of 445
    vote required for 296, 297
  dogs, for 530
  egress from, provisions for facilitating 465, 466

Municipal Act—*Continued.*
- hospitals. horses, for 530
  - patients in, liability to, for negligence 28
  - private, location, erection and use of buildings as 531
- hotels, egress from, provisions for facilitating 465, 466
  - fire, accident by, securing against in 471
- hours of labour, boarding stables, of persons employed in 554
  - horses, of persons employed by owners of 554
  - livery stables, of persons employed in 554
  - vehicles, of persons employed by owners of 554
- House of Commons, members and officers of, exempt from appointment to municipal office or election 110
- householder, meaning of term 67
- houses, affixing numbers to 506, 535, 536
  - disorderly, suppression of 464
  - ill-fame, of, suppression of 464
  - numbering of 506, 535, 536
    - expense of 506, 535, 536
- hydrants, purchasing or erecting or renting 463
- Hydro-Electric Commission, is statutory agent of corporation 16
- ice. *See* snow and ice
  - cream, sale of, on highways and in public parks and places, prohibiting 544
- ill-fame, houses of, suppression of 464
- immorality, preventing 490
- indecency, preventing 490
- indecent hand bills, posting up or distributing of 537
  - pictures 537
    - exhibition of 476
  - placards, etc., posting or exhibition of 476
  - plays, prohibiting the production of 476
    - stopping of performance of 476
    - warrant, arrest of performers of, without 476
  - posters, posting up or distributing of 537
    - exhibition of 476
  - public exposure of the person, preventing 490
- Indian lands, roads passing through. *See* highways
- indigent persons, aid to 460
  - security for advances to 460
- industrial exhibitions. *See* exhibitions
  - farm, committal to, of persons found drunk and disorderly in a public place 437
  - schools, aid to 518
- industries, commissioner of, appointment of 529, 530
  - department of, establishment of 529, 530
  - noxious or unhealthy character, of, prohibiting in defined areas 539

Municipal Act—*Continued.*
inebriate asylums, establishment, erection and maintenance of 437
habitual drunkards, committal of, to 437
Private Sanitarium Act, to apply to 437
infimaries, animals, for 530
dogs, for 530
horses, for 530
inflammable substances. *See* explosives
information as to how voter voted, communicating 160
penalty for 164
insane destitute persons, support of 555
intelligence offices, license to keepers of, fee for 545
revocation of 545
person to keep, licensing and governing 545
regulating 545
intrinsic value. *See* expropriation (compensation)
iron works, bonus to promote 445
debt for, when to be payable 313
vote required for 296, 297
Judges, County or District, one of the, to be Police Commissioner 425
members of council, ineligible to be 93
junk shops, cancellation of licenses of 537, 538
fees for licenses of 538
licensing, regulating and governing 5 7, 538
pledges from minors, taking of, by keepers of 553, 554
prohibiting carrying on of, in defined areas 539
justice, administration of, contribution to cost of, by cities and separated towns 432, 433
arbitration to determine amount of 433
courts of. *See* courts of justice
Justices of the Peace. *See also* police office
aldermen to be *ex-officio* 422
controllers 422
deputy reeves 422
heads of council 422
members of council, being, not thereby disqualified 422
ratepayer, being, not disqualified, because penalty goes to corporation 422
reeves to be *ex-officio* 422
returning and deputy returning officers to have powers of 129
labour, hours of. *See* hours of labour
ladders leading to roof 503
land, acquiring 344 to 351
covered by water included in term 2

MUNICIPAL ACT—*Continued.*
land, disposing of 344, 345, 349, 350
  discretion as to, not open to question 351, 352
  larger quantity of, than required, provisions for acquiring 350, 351
land titles office, included in term registry office 5
laundries, regulation and inspection of 522
  women, carried on by, exemption as to 522
laundrymen, licensing, governing and regulating 522
  women, exemption in favour of 522
lavatories, construction and maintenance of, in highways or elsewhere 522, 523
  expense of, defraying 522
  water, supply of, to 522
Law Association, accommodation, fuel, light, etc., for 431
Law Society of Upper Canada, members of, exempt from appointment to municipal office or election 110
Legislative Assembly, members and officers of, exempt from appointment to municipal office or election 110
lender, obligation of, to see to application of money lent 339, 340
  necessity for borrowing 342
libraries, free, aid to 458
  assent of electors to by-law for granting, not necessary 458
license commissioners ineligible to be members of council 96
  discretion as to granting or refusing 280, 281
    revoking 280, 281
  fees for, enforcing payment of 278
    fixing 278, 279, 280
    may be in the nature of a tax 280
    refund of, where, revoked 281
  fixing time for which, shall be enforced 278
  inspectors ineligible to be members of council 96
  number of, limiting, to one 282
  power to, includes power to prohibit 277, 278
lifeboat associations, aid to 523
light, contract for supply of 699
Line Fences Act. *See* fences
Liquor License Act, part X., subject to 287
list of defaulters in payment of taxes. *See* defaulters' list
literary societies, aid to 518
live stock exhibitions. *See* exhibitions
livery stables, establishment of, in defined districts, prohibition of 528, 530, 531
  fares to be charged by keepers of, enforcing payment of 528
    regulation of 527, 528
  labour, hours of, in. *See* hours of labour
  licensing, regulating and governing keepers of 527, 528, 529
  owners of, licensing and regulating 554, 555

MUNICIPAL ACT—*Continued.*
  Local Board of Health, chairman of, additional allowance to 556
  Local Improvement Act, powers of clerk under, clerk, etc., to have under s. 259, 286
    special assessments under, provision as to 78, 79, 80
  local masters of titles, ineligible to be members of council 94
    registrars 96
    municipality, becoming part of local municipality in another county 63, 64
  location, meaning of term 532, 533
  lock-up house, constable to have charge of 436
      remuneration of 436
    county town not having, may use county gaol 436
      compensation by, for use of county gaol as 436
    establishment, maintenance and regulation of 435
    prisoners, expense of conveying, to 436, 437
      liability for injuries to, in 436
    keepers, ineligible to be members of council 93
  lock shoes, regulating use of 529
  lodging houses, egress from, provisions for facilitating 465, 466
    fire, accidents by, securing against, in 471
  lots, numbering of 506, 535, 536
      expense of 506, 535, 536
    record of numbers of, to be kept 506
  machine shops, regulating and controlling location, etc., of 531
  malfeasance, etc., investigation of 241, 242, 243
      conduct of 241, 242
      counsel, employment of, at 242, 243
      Judge, fees of, for holding 242
      judicial, is not 241
      persons whose conduct is affected, right to be represented at 242, 243
      police force, as to 242
      witnesses, payment of, for attendance at 242, 243
  mandamus, cases as to 411 to 415
  manufactories, fire or light, use of, in, prohibiting or regulating 501
  manufactures, bonus to promote 445
      vote required for 296, 297
    dangerous in causing or spreading fire, prohibiting or regulating 502
    nuisance, being or creating, regulating of 474
  manure pits, erection, location and use of, regulation of 509
  market value. *See* expropriation (compensation)

MUNICIPAL ACT—*Continued.*
markets, articles exposed for sale in, regulating place and manner of selling 512
weighing 512
butcher's meat distrained for rent of, selling of 514
criers, prohibiting from practicing calling in, or on highways or vacant lots adjacent to 512, 513
establishing, maintaining and regulating 511, 512
farmers and producers may sell at stores and shops 513
fees, market, when may not be imposed or collected 5 5, 516
sale or lease of 518
scale of, maximum 515
for selling 512
weighing 512
forestalling, etc., of certain articles usually sold in, prohibiting 513
hucksters, grocers, butchers and runners, purchases by 513
measurement short, penalties for 514
seizure and forfeiture of articles of 514
measuring not compulsory 513 to 515
sale elsewhere than at 51
selling of certain articles, place and manner of 512
vehicles, etc., in which goods brought to 514
vendors of smallwares, prohibiting from practicing calling in, or on highways or vacant lots adjacent to 512, 513
vendors voluntarily using, may be required to pay fees 516, 517
weighing of certain articles, place and manner of 512
not compulsory 515
fees for, scale of 516
weight, light, penalties for 514
seizure and forfeiture of articles of 514
massage parlours, inspection and regulation of 523
Medical Health Department, enforcing by-law as to through 523
Police Department 523
massagists, governing, regulating and licensing 523
Medical Health Department, enforcing by or through, of by-laws as to 523
Police Department 523
master of titles, ineligible to be member of council 94
mayor, commissioner of police for city or town, to be a 423
justice of the peace, *ex officio*, to be 422
police office, attendance of, at 422, 423
posse comitatus may be called out by, of cities and towns 223

MUNICIPAL ACT—*Continued.*
  mayor, vacancy in office of, after 1st July, how filled 180, 181
    1st November, 181
  member, council, of a, qualification to be 87 to 92. *See* qualification
    disqualification to be 93 to 109. *See* disqualification
    exemption from being elected 110. *See* exemption
    interest which disqualifies from voting as 107, 108, 109
    resignation by 176
    vote on appointment of himself to office, may not 215
  members, commissioners for county, village or township councils, not disqualified to be 107
    county council, of, payment to, for attendance, etc., 555, 556
    declaration of office by 209, 236
      qualification by 209, 236
    disqualification of, for failure to levy sinking fund 332
      misapplication of 332
      to be 93 to 109
    liability of, improper investment of school money, for 336
      misapplication of sinking fund, for 331, 332
    overseers for county, village or township councils, not disqualified to be 107
    purchases by, from corporation are void 109, 110
    qualification necessary to be 87 to 93. *See also* qualification
    sales by, to corporation are void 109, 110
    superintendents for county, village, or township councils, not disqualified to be 107
    tenure of office of 125
    term of office of, extension of, to two years 126
    township council, of, payment to, for attendance, etc., 555, 556
  menageries. *See* exhibitions
  mendicants, restraining and punishing 490. *See also* begging
  merry-go-rounds, license fee for 550
    penalties for breach of by-laws as to 550
      recovery of 550
    prohibiting or regulating and licensing 550
  militia, calling out of, expense of 14, 223, 224
    corps, land for drill shed or armoury for, acquiring land for 498
      active, bands of music of, aid to 455
      military outfit or equipment for, providing 462
      pay of, adding to 462
  milk tickets, etc., regulating use of 505
  millers, exempt from appointment to municipal office or election 110
  ministers of every denomination exempt from appointment to municipal office or election 110
  money borrowed. *See also* borrowing

MUNICIPAL ACT—*Continued.*
- money borrowed, debentures on, pending sale 339
  - application of 339, 340
    - lender not bound to see to 339, 340
- money by-laws 312 to 328
  - approval of, by Municipal Board 324
    - certificate of, form of 324, 325
    - proceedings for obtaining 324 325,
    - valid and binding to be, after 325
  - assent of electors not required in case of certain 319, 320, 321
  - certificate approving of, by Municipal Board 324, 325
  - certified copy of, to be sent to Provincial Treasurer 335
    - penalty for failure to send 335
  - contracts for supply of public utility 321
    - assent of electors to, necessary 321, 322
  - county council, borrowing by 323
  - date when, to take effect 316, 317
  - debentures, approval of by Municipal Board 326
    - change in the mode of issue of 315, 316
    - date which, are to bear 316
    - extension of time for issue of 316
    - validity of, not open to question after approval 326
    - when to be issued 316
  - debt, estimates not provided for in, not to be incurred without assent of electors 317, 318, 319
    - specific sum, to pay 314, 315
  - debts and debentures, when to be payable 313
  - equal instalments of principal and interest payable, by 314, 315
    - with interest on balances 315
  - interest, advance in rate of, amendment of, in case of 323
  - officers of corporation, neglecting, etc., to carry into effect 324
    - penalty for 324
    - recovery of 324
  - recitals in 312, 313
  - register, failure to, does not affect validity of 328
  - registration of 326
    - effect of 327, 328

MUNICIPAL ACT—*Continued.*
    money by-laws, registration of, notice of, publication of 327
                failure to give, effect of 328
                passed under Local Improvement Act not necessary 327
                passed under Municipal Drainage Act, not necessary 327
        repeal of 323, 324
        repealing, recitals in 324
        specific sum, to provide for raising 314, 315
        validity of, not open to question after approval by Municipal Board 326
        yearly rates, for levy of 330
    monopoly, council may not grant 281, 282
        iron waste paper boxes, as to placing, may be granted 283
    mortgagee, qualification of, as member of council 91
    moving picture shows. *See* theatres
        theatres. *See* theatres
    Municipal Board, city, erection of town into a, by 60
        deviations on county boundary lines, powers of, as to 659
        extension of time for issue of debentures by 316
            passing by-laws, by 300
        powers of, as to declaring validity of by-laws 324, 325
            debentures 324, 325
            redemption of debentures 333
        town, annexation of, to urban municipality, by 64
            erection of, into a city by 60
                in unorganized territory by 60
                village into a, by 60
        township, annexation of part of, to urban municipality by 61
            junior, separation of, from union by 69
        unorganized territory, land in, annexation of, to township by 59
                unorganized township in, formation of, into township municipality, by 59
            township, annexation of, to city or town by 59
        urban municipality, annexation of town or village to, by 64

MUNICIPAL ACT—*Continued.*
  Municipal Board, village, annexation of district to, by 59
        to urban municipality, by 59
      erection of, into a town by 60
      police, erection of, by 693, 694
    wards, division of city or town into, by 60, 81
  municipal councils, civil government, are a branch of 47, 48
    Courts, assumption by, of control over legislative acts of 46 to 50
    delegation to, of powers of State 46 to 50
    discretion of, not subject to judicial control 46 to 50
    judicial control, emancipation of, from 46 to 50
    legislative authority of, not subject to control by Courts 46 to 50
    municipal corporations, powers of, to be exercised by 46
    powers of, delegation of 46, 265 to 268
      to be exercised by by-law 244
    status of 46 to 50
    trustees in ordinary sense, are not 47
      are in sense that Sovereign is for the people 47
  Municipal Drainage Act, special assessments under, provisions as to 78, 79, 80
  music, bands of, establishment or maintenance of, aid to 455. *See also* militia
    playing of, in parks, etc. 553
  music halls, license of, revocation of 549
    location of, prohibiting the 549
    regulating and licensing 549
    securing against accidents by fire in 471
  naphtha. *See* explosives
  narrow streets, lanes and alleys. *See* dwelling-houses
  negligence, gross, definition of 635, 636, 637
    liability of corporation for, in case of non-repair 635, 636, 637
    liability of corporation for 26 to 39
  new incorporation, assets, debts and liabilities, adjustment of, on 72 to 80
      agreement as to, reopening 75
      arbitration as to 73
    by-laws, how affected by 71, 72
      certain, may not be repealed 71, 72
    council, existing, to have jurisdiction until new council organized 80
      first meeting of, fixing time and place of 67
    creditors, effect of, on rights of 75

MUNICIPAL ACT—*Continued.*
new incorporation, election, first, provisions for holding 66
returning officer at 66
officials and sureties, effect of, on 81
railway bonus, sectional, provisions as to 80
special assessments under Drainage Act 78, 79, 80
Local Improvement Act 78, 79, 80
taxes, collection of and right to, on 72, 78
wards, division of cities and towns into, on 60, 61
newspaper proprietor, certain contracts of, do not disqualify 106, 107
vote, must not, on questions affecting dealings with corporation 107, 108, 109
reporters, privileges of 225
night soil, hauling of, on highways 476
nitro-glycerine. *See* explosives
noises, calculated to disturb inhabitants, prohibiting or regulating of 474
unusual 474
nomination, alderman, of candidates for office of 118, 119, 125
candidates, of, declaration by 122, 123
on behalf of 123
nominated, posting names of 121
resignation of 121, 122, 124
controller, of candidates for office of 118, 125
councillor 118, 119
deputy reeve 118
mayor 118, 125
meeting, adjournment of 120
declaration of result of 124
new municipality, in 119, 120
notice of 120
place of holding 118, 119, 126, 127
procedure at 120, 121
production of auditor's statement at 234
reeve, of candidates for office of 118
time of holding 118, 119, 125, 126
nominee of corporation, filing appointment of 292
right of, to vote on money by-law 291
vote, not entitled to, on by-law granting bonus to corporation 447
when to be appointed 292
notices, defacing of, prohibiting the 482
posting of, on buildings or vacant lots, prohibiting 482
public fairs, of, by-law authorizing holding of 538
pulling down, etc., of, prohibiting 482
nuisances, abating 474, 475

MUNICIPAL ACT—*Continued.*
- nuisances corporation by, liability for 26 to 39
  - manufactures, being or creating, prohibiting or regulating 474
  - prohibiting 474, 475, 476
  - trades being or causing, regulating 474
  - what are, no power except in Quebec, to declare 474, 475
- oaths, officers before whom, may be taken 165, 237
  - by whom, to be taken 236
- offal, hauling of on highways 476
- offensive matter, hauling of on highways 476
- officers, appointment of 460
  - duties of 239, 240
  - gratuities to 240, 241
  - persons who are and who are not 239, 240 460, 461
  - remuneration of 238, 461
  - security by 461
  - tenders for appointment of, invitation to make, prohibited 238
  - tenure of office of 239
- officers and servants of corporation ineligible to be members of council 93
  - liability of corporation for acts of 43
  - superannuation and benefit fund for 524, 525
- omnibuses. *See* vehicles
- Ontario Motor League, danger signals, erection of, by 659
  - injuries to 659
  - notices on 659
  - guide and mile posts, erection of, by 659
    - injuries to 659
    - notices on 659
  - penalties and recovery of 659, 660
  - municipal union, corporation may become a member of 461
    - contribute to expenses of 461
    - pay expenses of delegates to 461
  - Railway and Municipal Board. *See* Municipal Board
- opera houses, securing against accident by fire, in 471
- ordinaries, license fee for 545
  - revocation of, of 545
  - licensing and regulating 545, 546
  - limiting number of 545
- Ordnance, streets, lanes or thoroughfares made or laid out by 665, 666
- out houses, erection, location and use of, regulation of 509
- out-of-door relief to resident poor 455
- ovens, construction of, regulating the 502
  - removal of 502
- owner, actual occupation, person in, to be deemed 5

MUNICIPAL ACT—*Continued.*
- owner, vote, who is entitled to, as 113
- parades and processions on highways, regulation of, and of traffic during 555
- parks, acquiring land for and establishing, etc. 461
  - bands and musical instruments playing in, regulating or prohibiting 553
    - military, playing in, by-law not to apply to 553
  - exercising powers of Boards of park management as to 461
  - liability of corporation for accidents in 462
  - maintenance, repair and opening of 461, 462
  - police protection for, duty to provide 462
    - villages, acquiring land for, etc., in 703, 704
  - sale of fruit, etc., in, prohibition of 544
- party walls, erection of, enforcing and regulating the 502
- pathmaster, appointment, duties and remuneration of 460, 461
  - is a servant of corporation 460
- paupers, relief of 14, 455, 460
- peanuts, prohibiting sale of, on highways and in public parks and places 544
- pedlar (*see also* hawkers and pedlars)
  - who is a 540, 541
- penalties, by-laws, for contravention of, may be imposed 690
  - disposal of, when recovered 691, 692
  - prosecutions for, by whom to be heard and determined 690, 691
- personation, rewards for apprehension, etc., of persons guilty of 455, 456
- petitions, insufficiency of 52
  - withdrawal of names from 65
- petroleum. *See* explosives
- petty chapmen. *See* hawkers and pedlars
- pipes. *See* electricity
- philanthropic societies, aid to 518
- physicians and surgeons exempt from appointment to municipal office or election 110
  - fees of, liability of corporation for 13, 14
- pits, location of, injunction to restrain the 506
    - regulating the 506
  - making of, injunction to restrain the 506
    - prohibiting the 506
  - regulations as to 679
- plumbers, licensing, regulating and governing 549, 550
- plumber shops, location, erection and use of buildings as, regulation of 531
- poles. *See* electricity
- police commissioners. *See* Boards of Commissioners of Police
  - constables. *See* constables

MUNICIPAL ACT—*Continued.*
  police force, members of, appointment of 426
      duties of 428
      government of commissioners, to be subject to 427
      oath by 426
      powers of 428, 429
      protection, defence, etc., councils may pay for 427
      remuneration of 427
      superannuation and benefit fund for 524, 525
      suspension of 428
      tenure of office of 426
    magistrate, attendance of, at police office 422
      commissioner of police, to be a 423
    office, accommodation, etc., for, to be provided by councils 423
      clerk of 423
        duties and fees of 423
        police magistrate, to be under control of 423
        salary, paid by, fees of to belong to corporation 423
      establishment of, in cities and towns 422
      justices of the peace, acting for mayor, at 423
      mayor, attendance of, at, in certain cases 422, 423
          towns not having police magistrates 422
        powers of justices of the peace only, to have 423
      police magistrate to attend at, daily 422
  police village, area of 693
      increase of 694
    borrowing money for certain purposes of 700
        assent of electors to 700
    boundaries of 693, 694
    by-laws of, assent to, where comprising part of two or more townships 704, 705
        power of trustees of, to pass certain 705, 706
        trustees of, authentication of 706
        certified copies of, to be sent to township clerk 706
    constable for, appointment of 705
        remuneration and duties of 705
    county council to erect 693
    election first, in, fixing time and place for 693, 694
        naming returning officer for 693, 694
    electors of, qualification of 695, 696
    exhibitions, acquiring land for place for, by 703

Municipal Act—*Continued.*

- police village, fire engines and appliances for, expenditure for, providing money for 700
  - purchase of, with consent of township council 701, 702
  - supply of water for 700
  - use of, by township corporation 702
  - fire prevention, regulations as to, in force in 706, 707, 708
    - enforcement of 709
  - forming part of two or more townships, proportion of amount to be raised in each township, provisions for determining 697, 698, 711
  - gardens, public, acquiring land for, by 703
  - gunpowder, regulations as to, in force in 708
    - enforcement of 709
  - highways, acquiring land for 703
    - liability of township corporation for not repairing, in 699
    - lighting 700
    - making, etc., in 699
  - incorporated, by-laws of, authentication and proof of 710
    - chairman of board of, appointment of 709
    - default of, in repairing works, etc., remedy over of township corporation for damages occasioned by 710
    - name to be borne by trustees of 709
    - powers of 711
    - secretary of board of, appointment of 709
    - works, etc., undertaken by, expense of, to be borne by 710
  - inspecting trustee of, appointment of 696
  - land in another county not to be added to, without consent of council of that county 694
  - license fees to be fixed by trustees of 706
  - light, heat and power for, acquiring land for 711
    - contracts for supply of 699
  - liquor licenses for premises, money received for, credit of, to 700
    - Act, penalties for infractions of, committed in, credit of, to 700
  - locality, erection of, into a 693, 694
  - meeting of trustees, first, time and place for 693, 694

MUNICIPAL ACT—*Continued.*
police village, money borrowed under section 516, debentures for 700
payable on instalment plan 700
special rate for payment of 700
Municipal Board, erection of, by 693, 694
name of 693, 694
nuisances, regulations as to, in force in 708
enforcement of 708
parks, public, acquiring land for, by 703
penalties, recovery of 709
petition for erection of, requisites of 693, 694, 695
failure to act on, Municipal Board may erect the 693, 694
population of 693
powers of trustees of 699, 705, 706
ratepayers of, deduction from township rates of 698
rates to defray expenditure of, levy of 696, 697, 711
limit as to 697
sidewalks, construction of, in 699
liability of township corporation for non-repair of 699
statute labour, performance of, in, and commutation of 698
territory, annexation of, to 694
petition for 694
township council, requisition on, to levy rates to defray expenditure of 696, 697
trustees of, capacity of, to sue and be sued 695
election of 695
fire engine and appliances. to have care and control of 701
incorporation of 709
meeting, first, of 693, 694, 695
name by which to sue and be sued 695
number of 695
orders of, payment of 699
penalties of, for neglect of duties 708, 709
plant for supply of light, heat and power, to have care and control of 701
proceedings at election of, after first election 695, 696
qualification of 695, 696
vacancy in office of, how filled 696
village hall, to have care and control of 701
village, hall, acquiring lands for and erecting 700

MUNICIPAL ACT—*Continued.*
  police village, water, light, heat, power and gas works, powers of Board of, as to 711
  poll, closing of, hour of 139
    opening of, 139
    proceedings after close of 145 to 156
      for taking the 139 to 145
  poll book, delivery of, to deputy returning officers 136, 137
      entries to be made in 140 to 144
    clerk, appointment of 126
          by, of another poll clerk in his stead 128
          of, when to be made in certain cities 126
      declaration to be made by 236
      deputy returning officer to act as, in certain cases 128
      failure of, to attend at polling place 127
        perform duties, penalty for 163
          recovery of 163
      miscounting ballots, etc., by, penalty for 163
          recovery of 163
      oath by, as to delivery of ballot box 154
          counting of votes 154
        of secrecy by 160
      oaths, administration of, to 236, 237
      violations of secrecy, to report 160
      vote, may, at polling place 138
  polling places, absence of persons appointed to attend at 291
      appointment of 127
          persons to attend at 288
      change of 441
          notice in case of 441
      compartments for marking ballot papers in 132, 133
      constable, attendance of, at 145
      directions to voters, placarding at 133
      duties of deputy returning officers at 139 to 145
      establishment of 438, 439, 440
      materials for marking ballot papers, in 132
      posting at, bribery and corrupt practices sections 207
      public buildings, use of, as 440
      school houses, use of, as 440
  polling subdivisions, establishment of 438, 439, 440
        municipalities not divided into, clerk to perform duties of deputy returning officer for 137
        poll clerks for, appointment of 126, 127
        union of, to, for elections 440
  pool tables, licensing, regulating and governing keepers of 547, 548
      limiting number of licenses for 282

MUNICIPAL ACT—*Continued.*
portable steam engines, saw or shingle mills, for running, regulations as to use of 534
pound keepers, appointment, duties and remuneration of 460, 461
pounds, providing 479. *See also* animals
precipices, regulations as to 679
pressers, licensing, regulating and governing the business of 544
privies and privy vaults. *See also* drainage
cleaning and clearing of, regulation of and requiring, 465
disposing of contents of by corporation and recovery of expense of 465
closing or filling up 490.
construction of, regulation of 465
contents of, manner of disposing of, regulating of 465
privilege of witness, provisions as to 207, 208
prizes, farm front, best, for, in public school sections 685
surroundings 685
roadside, best, for 685
profane swearing, preventing 490
pro-mayor may sit in county council (Que.) 82
promissory notes, authority of corporation to make, etc. 340
promulgation of by-laws 301
proper list of voters at elections 133, 134
property saving companies, promoting, establishing and regulating 498
proprietary club. *See* bagatelle tables
Provincial Treasurer, right of, to withhold money of corporation 236
sinking fund, provisions for payment of, to 333, 334
public conveniences. *See* lavatories
money, roads on which, expended. *See* highway
resort or amusement, places of, egress from, provisions for facilitating 466
fire, accident by, securing against, in 471
school money, apportionment of 335, 336
improper investment of, liability for 336
schools, pupils of, expense of attendance of, at collegiate institutes and high schools 518, 519
Utility Commissioners, election of, ballot papers for 131
office, declaration of, by 236
consumer or taker of, not disqualified 107
publicity purposes, expenditures for 529, 558
qualification, declaration of. *See* declaration
elector, of 66, 111 to 118
questions as to, which may be raised 115

MUNICIPAL ACT—*Continued.*
- qualification, elector, territory annexed to urban municipality, in 117, 118
  - member of council, to be 66, 87 to 93
    - British subject, being a, necessary for 88
    - full age of 21 years, being of, necessary for 88
    - not being disqualified by any Act, essential for 88
    - property, necessary for 88 to 92
    - residence required for 87, 88, 89
- quarries, location of, injunction to restrain 506
  - regulating the 506
  - making of, injunction to restrain 506
    - prohibiting the 506
- quashing by-laws 302 to 311
  - application for 302
    - by corporation of another municipality or ratepayer of it 308
      - security for costs not required in case of 308
    - whom may be made 302
    - intervention in 303
    - notice of 306
      - service of 306
  - bribery or corrupt practices for 307, 308
    - inquiry as to 308
      - evidence on, may be read on motion to quash 308
    - inquiry as to, evidence on, to be returned to Court 308
  - discretion as to 302, 303
  - illegality for 302 to 306
  - necessity for, before action for acts done under 419, 420, 421
  - promulgated by-law, limitation of time for quashing 309, 310, 311
  - recognizance, allowance of 307
    - entering into 306, 307
    - money, payment of into court, in lieu of 307
      - paid into court, application of 307

Municipal Act—*Continued.*
quashing by-laws, registered by-law, limitation of time for quashing 309, 310, 311
staying proceedings on by-law, in case of motion to quash 308
convictions for contravention of by-laws
by-law, failure to prove, not ground for 692
may be proved by lease of pledge 692
proof of, may be dispensed with by Judge 692
questions negatived in case of equality of votes 214
submitting to vote of electors 456, 457
quo warranto. *See* contested elections
racing, etc., on highways and bridges 456
rafts, dues on, imposition and collection of 459
includes lumber and saw-logs coming into a harbour 459
regulation of 459
railway, bonus in aid of, county, by 451, 452
petition against 451
proceedings on 451, 452
debentures for, delivery of, to company 454
trustees 453
deposit of, by trustees 454
sale of 454
trustees of, appointment of 453, 454
majority of, may act 455
removal of 454
remuneration of 455
trusts upon which, held 454
debt for, when to be payable 313
limitation of amount of 449, 452
section of township, by 80
vote required for 296
company, chief engineer of, certificate of, as to right to debentures 454
penalty on, for giving false certificate 455
subscription for shares of stock, in 453
ratepayers, actions by 415 to 419
rates, yearly, levy of 329
excessive 330
limit of 329
one or several by-laws for 330
shortage in 330

Municipal Act—*Continued.*
rates, yearly, levy of when deemed to have been imposed and to be due 330
receipts and expenditures, etc., auditor's statement of 232, 233
nomination meeting, production of, at 234
posting up of 234
printing and distribution of 234
publication of 234
wrongful entries, etc., in 235
penalty for making 235
recovery of 235
records and documents of councils. *See* councils.
recount, application for 157
costs of 159
enforcing payment of 159
taxation of 159
proceedings on 157, 158, 159
reeve, administration of oaths by 237
election of, for new township 66
town, of, to be *ex officio* justice of the peace 422
vacancy in office of, after 1st November, how filled 181
reeves, deputy, number of 87
right of municipality to, contestation of 182
town, of, to be *ex officio* justices of the peace 422
vacancy in office of, after 1st November, how filled 181
refining ores, bonus to promote works for 445
debt for, when to be payable 313
vote required for 296, 297
registrars and deputy registrars of deeds ineligible to be members of council 94
Registry Act, expenses incurred under s. 23 of, arbitration as to contribution to be made by city or separated town to 433
contribution by city and separated town to 432, 433
registry office, land titles office included in term 5
regulating, what authorized by power of 540
reinstatement. *See* expropriation (compensation)
remedy over, actions to recover damages for non-repair, in 650 to 655
areas, in case of 678
procedure where, sought 654-655
repair of highways and bridges 598 to 648
areas under highway, etc., of 678
bridges on which toll is granted, of 678
damages for failure to, limited 645, 646, 647

MUNICIPAL ACT—*Continued.*
repair, damages for failure to, corporations jointly liable for, contribution between 649
matters to be taken into account in determining 649
disputes as to action to be taken where jurisdiction joint, arbitration as to 657
proportions of cost of, arbitration as to 657
duty to 598 to 601
climatic conditions, effect of, on 625 to 627
corporation on which, rests 598 to 601
default in performing, action for 598 to 601
limitation of time for bringing 631 to 633
Quebec cases as to 564
damages for, not confined to accidents 607
liability for 598 to 601
destruction of highway, effect of, on 630, 631
extent of 598 to 607
Quebec cases as to 559 to 564
highways and bridges, certain, no 643, 644
toll roads, sidewalks, etc., on 649
independent contractor, when want of, due to acts of 623, 624
kept in, meaning of 608
money, raising, to 678
notice of injury and claim 637 to 641
death, unnecessary in case of 641
defects in, when excused 641, 642
failure to give, when excused 641, 642
reasonable excuse for not giving 641, 642
obstruction on highway, when want of, due to 620 to 623
runaway horses, accidents in case of 628
snow or ice on sidewalks, injury caused by 635, 636, 637
gross negligence necessary in case of 635
traction engines, duty to, as respects 624, 625
resident tenants, who are 54, 55
residential streets, building line on, establishment of 523, 524, 536
establishment of 523, 524, 536
fronting on, meaning of term 523, 524, 536
two-thirds vote necessary to pass by-laws as to 523, 536
returning officer, appointment of, for police village 693, 694, 695
wards 126, 128

MUNICIPAL ACT—*Continued.*
- returning officer, appointment of, when, to be made in certain cities 126
    - authority of, to arrest 129
    - clerk to be, for whole municipality 127
        - where no polling subdivisions 127
    - conservator of the peace, to be a 129
    - declaration by 236
    - election in new municipality, duties of, at 70
    - nomination meeting, failure of, to attend at 128
    - penalties on 161, 162, 164
    - polling place, failure of, to attend at, etc. 128
    - *quo warranto* proceedings, may be made a party to 191, 192
    - refusal, etc., of, to act 128
    - secrecy, oath of, to take 160
    - special constables, appointment of, by 129
- returns. *See* Bureau of Municipal Affairs
- reversionary interests. *See* expropriation (compensation)
- rewards, discovery, etc., of persons guilty, etc., of contraventions of s. 138, for, 455, 456
    - flagrant crimes, for, 455, 456
    - personation 455, 456
    - horse thieves, for conviction of 519
- rifle associations, aid to 462
- riot, return to clerk to be delayed in case of interruption of election by 155
    - resumption of election after interruption by 157, 158
- river, booms on, protection and regulation of 528
    - driftwood in, removal of 594, 595
        - arbitration as to 594
    - injuring, etc., prohibition of 459
    - obstructions in, removal of 459
    - preserving 459
    - road allowance on bank of or leading to 665
    - timber, saw-logs and staves, booms on, for safe-keeping of 528
    - what is a 1, 2
- roads. *See* highways
- road-making machinery, borrowing money for purchase of 680
    - debentures to be on instalment plan 680
        - to be payable within 5 years 313, 686
    - purchasing or renting 680
- road material, acquiring land to get, from 679, 680
    - compensation for 680
        - determination of, by arbitration 680
    - entering on land to search for 679
    - passing over land to obtain 680
    - searching for and taking 679

MUNICIPAL ACT—*Continued.*
- roller skating rinks, license fee for 550
  - penalties for breach of by-laws as to 550
    - recovery of 550
  - prohibiting or regulating and licensing 550
- rolling mills, bonus to promote 445
  - debt for, when to be payable 313
  - vote required for 296, 297
- rouge et noir. *See* gambling
- roulette tables. *See* gambling
- run away horses. *See* repair of highways and bridges
- runners, prohibiting 506, 507
- sales stables. *See* stables
- sanitariums, bonus in aid of 445
  - vote required for 296, 297
- scaffolds, alteration of dilapidated or unsafe 501
  - construction and erection of, regulating the 474
  - inspection of 474
  - inspector of, appointment of 474
  - pulling down, renewing and repairing of dilapidated or unsafe 501
- schools, professors, masters, teachers, officers and servants of, exempt from appointment to municipal office or election 110
- School Boards, members of, ineligible to be members of council 94
  - resignation of, in order to qualify 94, 109
  - houses, annexed territory, in, destination of 77
    - assets, are not, of a municipal corporation 74
    - egress from, provisions for facilitating 465, 466
- scientific societies, aid to 518
- scrutiny. *See* voting on by-laws
- scuttles, roof, in, requiring 503
- second-hand goods. *See* dealers in second-hand goods
- secrecy of proceedings, provisions for maintaining 159, 160, 161
  - violations of, Crown Attorney to enquire as to, and prosecute for 160
    - penalty for 164
      - recovery of 164
    - report of 160
  - oath of 160
    - administration of 165, 237
    - provision as to taking, directory only 160
- seeds, purchase and donation of 481
- Senate, members and officers of, exempt from appointment to municipal office or election 110

MUNICIPAL ACT—*Continued.*
- separated town, administration of justice, contribution of, to cost of 432
  - no general legislation for creating a 4
- servants, corporation, of, ineligible to be members of council 93
- severance. *See* expropriation (compensation)
- sewerage commission, establishment of 524
  - works, extension of 492, 493
    - borrowing money for 492, 493
- sewers. *See also* drainage
  - injuries caused by, liability for 24 to 26
  - obstructions in, removal of 504, 505
  - toll roads on, repair of 649
- shall, sometimes not imperative 46
- shareholder, bridge company, in, corporation may be 681
  - by-law, assented to by electors, invalid if carried by vote of interested 107, 108
  - company, in, having contract with corporation, not disqualified 105
  - railway company, in, corporation may be 452
  - vote, must not, on questions affecting company, 107, 108, 109
- sheriffs ineligible to be members of council 93
  - bailiffs of 93
  - deputy 93
- showmen, exhibitions by, license fee for 550
  - licensing 550
  - penalties for infraction of by-laws as to 550
    - mode of recovery of 550
  - prohibiting or regulating 550
- shows. *See* exhibitions
- sidelights on vehicles 532
- sidewalks, areas under 677, 678
  - horses or cattle, driving, etc., of, on 462, 463, 705
  - setting apart part of highway for 665
  - snow or ice on, injuries caused by 635, 636, 637
  - spitting on 508, 705
  - toll roads, on, repair of 649
- signs, defacing of, prohibiting the 482
  - erection of, prohibiting or regulating the 482
  - pulling down of 482
- sign posters, licensing, regulating and governing 537
- sinking fund, action by ratepayer to recover 332
  - application of, in redemption of debentures 333
    - to pay current expenditures, prohibited 331
  - disqualification for neglect to levy 332

MUNICIPAL ACT—*Continued.*

- sinking fund, interest to be allowed on payments of, to Provincial Treasurer 333
  - investment of 334, 335
  - liability for misapplication of 331, 332
  - misapplication of, disqualification for 332
  - payment of, to Provincial Treasurer, provision may be made for 333
  - payments to be made for, when to be debt to treasurer 334
  - returns as to 335
    - penalty for failure to make 336
  - treasurer to lay before council statements of amount required for 332
- sinks. *See also* drainage.
  - cleaning and clearing of, regulation of and requiring 465
  - construction of, regulation of 465
  - contents of, manner of disposing of, regulation of 465
- sixty years of age, persons of, exempt from appointment to municipal office or election 110
- slaughter houses, animals intended for food, prohibiting slaughter of, except in 482
  - establishing and maintaining public 482
  - prohibiting or regulating and inspecting 482
- sleighing, highway, keeping open during season of 535
  - putting stone, etc., on during season of 688
- smallpox patients, care of, liability of corporation for 43
- smelting ores, bonus to promote works for 445
  - debt for, when to be payable 313
  - vote required for 296, 297
- smoke prevention, by-laws for 507, 508
  - exemptions from 507, 508
  - penalties for infraction of 507, 508
- Snow Fences Act, corporation, liability of, under 9
  - powers of county councils as to 528
- snow and ice, accidents due to failure to remove, liability for 483 to 489
  - roofs of buildings, removal of, from, 482, 483, 705
  - sidewalks, removal of, from 482, 483, 705
    - adjoining unoccupied buildings, removal of, from 489, 705
      - vacant lots 489, 705
  - unoccupied buildings, removal of, from roofs of 489, 705
- solicitor. *See also* claims
  - employment of 11, 12, 18, 19, 20
  - fees of, liability for 11
  - paid by salary, employment of 238
    - right of corporation to costs, where 238, 239

MUNICIPAL ACT—*Continued.*
sparring exhibitions, prohibiting of certain, without permission 489
special adaptability. *See* expropriation (compensation)
Acts, general rule as to, effect of general acts on 5, 6
Municipal Act, not to affect provisions of 5, 6
constables. *See* constables
examiner, appointment of, where provided for 5
evidence taken before, orally 4
stenographic reporter, taking by 4
value. *See* expropriation (compensation).
speedways, repeal of by-law setting apart highway for 534
setting apart highways for 533, 534
use of, regulation of 533, 534
spirituous liquors, persons licensed to sell by retail, ineligible to be members of council 95
spitting on sidewalks, etc. 508, 705
stables. *See also* boarding stables, horse stables, livery stables, sales stables
erection, location and use of, regulation of 509
fire or lights in, prohibiting or regulating use of 501
stairs, roof, leading to 503
standing committees, chairmen of, additional allowance to 556
statistics, tabulated statements of 226, 229
statute, roads laid out, under. *See* highways
statute labour. *See also* highways, police village, sleighing
police villages, in 698
roads on which, usually performed 568, 570, 571
toll, expenditure of, on 687
steam engines, portable. *See* portable steam engines
transmission, pipes and conduits for, authority to lay down 489
stenographic reporter, evidence, taking of, by 4
fees of, by whom to be paid 4
to form part of costs of the proceedings 4, 5
stone. *See* road materials
storage of builder's plant, buildings used for, location, erection and use of 530, 531
stores, location, erection and use of buildings as 530, 531
stoves, construction of, regulating the 502
removal of 502
street railway company, watering street, contracting with, for 463
superannuation and benefit funds, corporations' officers and employees, for 524, 525
fire brigade, members of, for 524, 525
police force 524, 525
wives and families, for 524, 525
sureties, liability of, not affected by new incorporation 81

MUNICIPAL ACT—*Continued.*
surface waters, civil law as to drainage of 40
common law 39
liability in respect of 39, 40
surplus money, application of 331, 335
investment of 335
revenues from public utility, application of 331
swine, keeping of, prohibition of 464
regulation of 464
switchback railways, license fee for 550
penalties for breach of by-laws as to 550
recovery of 550
prohibiting or regulating and licensing 550
tanneries, prohibiting or regulating erection or continuance of, in defined areas 473
tavern, election not to be held in 126
taxation, exemption from. *See* exemption
taxes, added territory in, collection of, on new incorporation, etc. 72, 78
arrears of, due by persons, cause of disqualification 104, 105
against land 104, 105
collector of, ineligible to be member of council 93
non-payment of, disqualification of elector for 464
when in arrear 330
teamsters, licensing, regulating and governing 527
regulating charges of 527
telegraph poles and wires. *See* electricity
telephone poles and wires. *See* electricity
tenement houses, prohibiting or regulating and controlling location or erection of 532, 533
theatres, egress from, provisions for facilitating 465, 466
fire, accidents by, securing against, in 471
licensing and regulating of 549, 706
license of, revocation of 549, 706
location, erection and use of buildings as 530, 531, 706
moving picture, licensing of 549, 706
location, erection and use of buildings as 530, 531
prohibiting erection of 530, 531, 549
timber. *See also* road material
road allowances on, preserving and selling 678
time, computation of 94, 95, 634, 635
tinsmith shops, location, erection and use of buildings as 530, 531, 706
tires, regulating the width of 509, 529
tobacco, keepers of stores for sale of, by retail, licensing, regulating and governing 547, 706
licenses, to revocation of 547, 706

MUNICIPAL ACT—*Continued.*

tobogganing on highways, prohibiting or regulating 496, 497

toll road, abandonment of, by county council 586, 587

agreement for acquiring; in consideration of expenditures on 681

approaches, etc., upon, keeping in repair 649

by-law for abandonment of, not to be effective until approved by Municipal Board 586, 587

tolls, raising money by 678

grant of 678

tombs, violation of, prohibiting 473

tombstones 473

torts, corporation, of, liability for 21 to 46

town, area of 58

council of, composition of 84, 85, 86

change in 85, 86

election of, by general vote 84

erection of, into city 60, 61

village into 60, 61

separated. *See* separated town

township, annexation of part, to 61

unorganized territory, in, annexation of township to 59

area of, in 58

erection of 60

registration of order for 60

urban municipality, annexation of, to 64

wards, division of, into 60, 61

township boundary, disputes as to work on, etc., determination of 657, 658, 659

failure to open, etc., application to county council in case of 657, 658, 659

work to be done on, may be done by commissioners 658

council, apportionment of public school money by 335, 336

composition of 86

improper investment of school money, liability of members of, for 336

junior, separation of, from union 68, 69

locality, erection of, into a 65 to 67

union of townships, definition of 67, 68

formation of 68

included in term 4

seniority of townships in 68, 69

united townships, definition of 67, 68

formation of 68

unorganized, annexation of, to city or town 59

order for, must be registered 59

MUNICIPAL ACT—*Continued.*
- township, unorganized, formation of, into municipality 59
  - territory, annexation of land in, to 59
    - formation of, in 59, 65
      - meeting to consider 66
        - chairman of 66
        - declaration of result of 67
        - election of reeve and councillors at 66, 67
        - new, may be called 67
        - notice of 66
        - report of result of 66
          - objections to 67
        - voters at 66, 67
        - when complete 67
      - petition for 65, 66
        - requisites of 65, 66
    - formation of two or more townships in, into union 68
- traction engines, prohibiting use of, on highways 509, 510
- trades, dangerous in causing or spreading fire, prohibiting or regulating 502
  - nuisances, being or creating, prohibiting or regulating, etc., of 473
  - petty, persons carrying on. *See* hawkers and pedlars
- trading stamps, Dominion legislation as to 248, 249
  - prohibiting giving, etc., of 248, 249, 509
- traffic on highways. *See* highways
- transient traders
  - assessment roll, persons not entered on, for income or business assessment to be licensed as 550, 551
    - entered for first time on 552
  - fees for licenses of 552
  - licensing, regulating and governing 550, 551, 552
  - persons included in term 552
  - stock of insolvent, by-laws not to extend to sales of 552
  - taxes of, crediting sum paid for, license on 553
- travellers, regulations as to places dangerous to 679
- travelling or other expenses, payment for or towards 557, 558
- treasurer, appointment of 226
  - chartered bank, deposit of money in, by 228

MUNICIPAL ACT—*Continued.*
treasurer, death of county 227
treasurer *pro tempore*, appointment of, in case of 227
security by 227, 228
defaulters in paying taxes, transmission of list of, by 228, 229
deputy, appointment of 226
security by 226
duties of 228
as to sinking fund 332
ineligible to be member of council 93
money deposited by, to his credit, successor may draw 230
inspection of account of 234
non-liability of, for money paid in accordance with by-law, etc. 228
remuneration of 226
security by 226
sufficiency of, enquiry into by council 226
statements to be furnished by, to council 228
of payments to treasurers of other municipalities, by 229
statistics, etc., to transmit to bureau 229
penalty for failure 229
sureties of, notice to be given to, where, removed or absconds 229
trees, highways passing through woods, on each side of, cutting down 683, 684
highways, etc., planted on, destroying of 682
injury to 682
property in 682
removal of 682, 683
trimming of 682
planting of, on 682
notice of intention to remove 682
recompense for removed 682
removed, not to be, without permission of council 682
road allowances, on, preserving and selling 678
tussock moths, destruction of 532
undertaking establishments, location, erection and use of buildings as 531
union of townships, definition of 67
dissolution of, consequences of 69, 70
formation of, by Lieutenant-Governor 68
on petition 68
junior township, separation of, from a 68, 69
seniority of townships forming a 68, 69
separation of townships from a 68, 69

MUNICIPAL ACT—*Continued.*
  united counties, county includes 2
    expenditures in one of several 684, 685
      borrowing money for 684
      by-law for borrowing money for 684
      debentures for, provisions as to 684, 685
      members representing other county not to vote on by-law 684
      rates, how to be levied 684
      warden to have casting vote on by-law in case of tie 684
  universities, aid to 518
    fellowships, etc., in, endowing 518
    professors, masters teachers, officers and servants of, exempt from appointment to municipal office or election 110
    pupils of collegiate institutes and high schools, expense of attendance of, at 518, 519
  University of Toronto, aid to 518
    fellowships, etc., in, endowing 518
    pupils of collegiate institutes and high schools, expense of attendance of, at 518, 519
  unslaughtered animals. *See* food
  Upper Canada College, aid to 518
    fellowships, etc., in, endowing 518
    pupils of collegiate institutes and high schools, expense of attendance of, at 518, 519
  urban municipality, annexation of town or village to an 64
  urinals, construction and maintenance of, in highways or elsewhere 522, 523
    expense of, defraying 522
    water, supply of, to 522
  vacancy, alderman, in office of, how filled 179, 180, 181
    controller, 218
    council, in, how caused 124, 173 to 176
      filled 173 to 181
      proceedings to declare 173 to 176
    mayor, in office of, after 1st July, how filled 180, 181
    new election to fill 124, 176, 177, 178
    police village, in office of trustee of, how filled 696
    reeve or deputy reeve, in office of, after 1st Nov., how filled 181
    warden, in office of, how filled 176
  vacant lots. *See also* drainage
    criers and vendors of smallwares, practising calling in 512, 513

MUNICIPAL ACT—*Continued.*
  vacant lots, enclosure of 511
      filling up, etc., of 465
      highways, adjacent to, selling in 512, 513
          market place, selling in 512, 513
      notices, posting of, on, prohibiting or regulating 482
  vagrants, restraining and punishing 490
  vaults where dead interred, prohibiting violation of 473
  vehicles, authorizing and assigning stands for 495, 496
      children riding behind or getting on, when in motion 496
      hire, used for, drivers of, licensing, regulating and governing 527, 554, 555
              regulating charges of 527, 554
          keepers of, fares of, enforcing payment of 554
              regulation of 527, 554
      hours of labour of persons employed by owners of 554
      lock shoes on, regulating use of 529
      owners of, licensing and regulating 554, 555
      sidelights on 532
      stands or booths, covered, for shelter of drivers of, erection of 495
          not to be placed on sidewalk 495
      wheeled, license fee for 525
          licensing 525
          penalties for contravention of by-laws as to 525
              recovery of 525
  vendors of newspapers. *See* children
      smallwares. *See* children
  vice, preventing 490
  Victorian Order of Nurses, aid to 463
  victualling houses, license fee for 545
          revocation of 545
      licensing, regulating and limiting number of 545, 546
  village, annexation of new, to what county 58
          urban municipality, to 64
      area of 58
      boundaries of, by-law erecting, to declare 52
      council of, composition of 86
      county council, authority of, to form new 51
          duty of, to form new 52
      district, annexation of, to, by Municipal Board 59
          erection of, into 51 to 58
      erection of 51 to 58
          by-law for, notice of intention to pass 56, 57
              passing of, publication of 58
              registration of 57

MUNICIPAL ACT—*Continued.*
  village, erection of, by-law for, transmission of certified copy of, to Provincial Secretary 57
      when not subject to attack 57
    procedure for 51 to 58
    requisites for 51 to 56
   name of, by-law to declare 52
   new, comprising parts of more counties than one 58
   petition for erection of 51 to 56
    presented, when to be deemed to be 56
    requisites of 55, 56
    sufficiency of, how determined 56
    withdrawal of names from 65
   police village, erection of, into a 59
   population of proposed, how to be ascertained 56
   urban municipality, annexation of, to 64
  vote, casting, by clerk 117
   clerk not entitled to, except to give casting 117
   elector may, where and how often 137, 138
   persons entitled to, at elections 111 to 115. *See also* electors
      on money by-laws. *See* money by-laws
      questions. *See* questions
    not entitled to, at elections 115, 116, 117. *See also* disqualification
    paid for services in connection with elections, not entitled to 117
   territory annexed, persons entitled to, in 117, 118
  voters. *See also* elections, secrecy of proceedings
   incapacitated by blindness, etc., marking ballot papers of 143, 144
   incapacity, declaration of, as to 144
   mistake in names of 140
   not to be required to state how or for whom they voted 161
   oaths to be taken by 141, 142
      whom to be administered 142
   religious grounds, objecting to mark ballot paper, on 144
      declaration as to 144
   when deemed to have voted 144
  voters' list, assessment roll, preparation of, from 135
    attested copies of, to be furnished to deputy returning officers 136
    by whom to be prepared 134, 136
    persons entered on, entitled to vote 115, 116, 117
     entitled to be entered on 111 to 114
        British subjects, must be 111
        disqualified, must not be 111
        farmers' sons 111, 112, 113

MUNICIPAL ACT—*Continued.*
- voters' list, persons entitled to be entered on, full age of twenty-one year of, must be 111
  - income voters 111, 112
  - prohibited from voting, must not be 111
  - rating necessary to qualify 111 to 114
  - residence necessary to qualify 114, 115
  - proper, to be used at elections 133, 134
  - substitute for, in new municipality 134
  - supplementary, in case of new incorporation or annexation of territory 134, 135
  - voting on by-laws, etc., for 292, 293
- voting on by-laws or questions 287 to 296
  - annual municipal election, taking votes at, in certain cases 288
  - assent of electors, proceedings for obtaining 287 to 296
    - when deemed to be given 295, 296
  - ballot papers, form of 294
  - by-law, copy of, publication of 288, 289, 290
  - clerk not to give casting vote 294
    - to be entitled to vote if qualified 294
  - date for taking votes 288
  - declaration by persons appointed to attend at summing up and polling places 291
    - of result of voting, by clerk 295
  - deputy returning officer, appointment of 287
  - directions to voters, form of 294
- warden, commissioner of police for county, to be a 425
  - election of 210
    - equality of votes at, who to give casting vote 210
  - justice of the peace, *ex officio*, to be 422
  - resignation of office by 176
    - vacancy caused by, how filled 176
  - vacancy in office of, how filled 176
- wards, city, new, to be divided into 60
  - minimum population of 61
  - new division into 61
  - number of 61
  - town, new, to be divided into 60
- warehouses, egress from, provisions for facilitating 465, 466
  - fire, accident by, securing against, in 471
- waste-paper boxes, exclusive right to maintain in streets 283
- watchmen, night, employing and paying, by-law for 510
  - petition necessary to authorize employment of 510

Municipal Act—*Continued.*
watchmen, night, special rates to be levied to pay expense of 510
tenant liable for, in absence of agreement to contrary 511
tenant, if there is a, owner may not petition for 511
water. *See also* wells, water supply
analysis of, procuring 491
bathing in public, prohibiting or regulating 463
damage caused by, supplied by corporation 41
fouling of 491
gates, erection and maintenance of 471
lavatories, urinals, water closets, etc., for 522
obstructions in, removal of 459
pipes or conduits, laying under county highways 528
public, charges for supplying 491, 492
reservoirs for, fouling of 491
tanks, construction, etc., of, regulation of 511
towers, 511
wasting of 491
waterworks, from, compelling use of 491, 492
well or spring, from, prohibiting use of 491
water commissioners, statutory agents of corporation 16
company, requisites of by-law granting bonus in aid of 296
closets. *See also* drainage.
cleaning and clearing of, regulations for and requiring 465
and disposing of contents of, by corporation and recovery of expense of 465
closing or filling up 490
construction of, regulation of 465
and maintenance of, in highways or elsewhere 522, 523
contents of, manner of disposing of, regulation of 465
expense of, defraying 522
water, supply of, to 523
workmen, providing, for 464
supply, contracting for 10, 463, 700
corporation, by, liability of, for defects in 41
watercourses. *See also* drainage
bridges over 490
culverts 490
obstruction of, prohibition of 490, 535
removal of 535
Quebec cases as to 566, 567
waterworks company, requisites of by-law granting bonus to 296
watering streets, contracting with street railway company for 463

MUNICIPAL ACT—*Continued.*
- waters, deep, regulations as to 679
- waxwork, exhibitions of. *See* exhibitions
- weeds, by-law as to, inspector to enforce, appointment of 490, 491
  - corporation, liability of, for injury caused by spread of 491
  - detrimental to husbandry, compelling destruction of 490, 491
    - prohibiting growth of 490, 491
- weighing machines, erecting and maintaining 535
  - fees for use of 535
- wells, cleaning 491
  - closing or filling up 490
  - establishing of public 491
  - filling up of 491
  - fouling of, prohibiting 491
  - protecting 491
  - regulating 491
- wet lands, purchasing and draining 535
- wharves, aid in construction of 458
  - erection and renting of 459
  - public, making, etc., of 459
  - removal of obstructions from 459
- wheels, regulating the width of 509, 510
- witness, privilege of, provisions as to 207, 208
- words and phrases
  - adjacent 59
  - adjoining 59
  - arbitration 1
  - bonus 442
  - bridge 1
  - by-law 287, 302
  - calculate 474
  - city 2
  - conveyance 206
  - county bridge 567
  - culvert 1
  - dealers in second-hand goods 538
  - debt 312
  - deemed 57
  - district 51
  - due 330
  - electors 2, 287
  - expropriate 343, 344
  - expropriating 343, 344
  - expropriation 343, 344
  - freeholder 54
  - full age of 21 years 55, 56
  - gross negligence 635, 636
  - hawker 540, 541

MUNICIPAL ACT—*Continued.*
- words and phrases
    - highway 2
    - in force 71
    - Judge 182, 287
    - kept in repair 608
    - land 2, 343
    - last revised assessment roll 55
    - leasehold 92
    - leasehold estate 92
    - local municipality 2
    - location 532, 533
    - Master in Chambers 182
    - member 2
    - members 2
    - money by-law 3
    - Municipal Board 2
    - municipal electors 2
    - municipal enumeration 3
    - municipality 3
    - owner 113
    - pedlar 540, 541
    - population 3
    - prescribed 3
    - proposed by-law 287
    - proprietary club 547
    - public dance hall 531
    - publication 3
    - published 3
    - railway 450
    - railway company 450
    - rateable property 312
    - ratepayer 416
    - reside 54
    - second-hand goods 538
    - separated town 4
    - shall include 4
    - shall mean 4
    - sidewalk 637
    - stores 530
    - Supreme Court 4
    - the Judge 343
    - town 2
    - township 2, 4
    - two-thirds vote 4
    - unorganized territory 4
    - urban municipality 4
    - village 2

MUNICIPAL ACT—*Continued.*
- workmen, closet accommodation for 464
  - hoists, etc., protection of, as to 474
- Workmen's Compensation Act, liability of corporation under 45, 46
- works, undertaking, jointly, by councils of local municipalities in same county 681
- wrecking of buildings. *See* buildings
- yards. *See also* drainage
  - filling up 465
- yearly rates. *See* rates

MUNICIPAL ARBITRATIONS ACT—
- appeal lies from award, 882
  - time for bringing, 882
- application of Act, 885
- assessor, appointment of, to assist arbitrator, 884
  - fees of, 884, 885
  - when to be called in, 884
- award, appeal from, 882
  - filing of, 882
  - public, not to be made, until fees paid, 882
- compensation, claims for, against cities of over 100,000, 880
- costs, power of arbitrator to award, 881
  - taxation of, 883
- exhibits, delivery out of, 882
- expert assistance to arbitrator, 881
- Official Arbitrator, appointment of, 880, 885
  - by-law for appointment of, 885
  - duties and powers of, 880, 881
  - fees of, 883
    - recovery of, 883, 884
  - notice of reference to, 881
  - qualification of, 880
  - reasons for award of, stating, 881
  - transfer of actions to, 883
- rules, making and application of, 885
- Supreme Court, arbitrator to have certain powers of Judge of, 881
- tariffs, making and application of, 885
- vacations not to be reckoned in appeal proceedings, 882

MUNICIPAL ELECTRIC CONTRACTS ACT—
- electric power, assent of electors required to contracts as to, 916
  - contracts as to, assent of electors required to 916
- franchise, assent of electors required to grant of, 916
  - granting of, 916
  - renewal of, assent of electors required to, 916

MUNICIPAL FRANCHISES ACT—
  assent of electors to extension or renewal of franchise, when necessary, 878
    grant of franchise, when necessary, 877, 878
      not necessary, 878, 879
  by-law of county or township, exception in case of, 879
  continuous line, etc., limitation of application of Act in case of, 878, 879
  electric light, heat or power, right to supply, by-law necessary for granting, 877
    assent of electors to, necessary, 877
  exceptions as to application of Act, 878, 879
  franchises, extension of, by-law necessary for granting, 878
      assent of electors to, necessary, 878
    meaning of, 877
    operation of which is limited to one year, Act not to apply to, 879
    renewal of, by-law necessary for granting, 878
      assent of electors to, necessary, 878
  gas, right to supply, by-law necessary for granting, 877
    assent of electors to, necessary, 877
  highway, right to use or occupy, by-law necessary for granting, 877
      assent of electors to, necessary, 877
    what included in term, 877
  Lieutenant-Governor in Council, approval of grant of franchise, by, 879
  natural gas not intended for sale or use in municipality, Act not to apply to, 879
    right to supply, by-law necessary for granting, 877
      assent of electors to, necessary, 877
  oil not intended for sale or use in municipality, Act not to apply to, 879
  Ontario Railway and Municipal Board, approval of grant of franchise, by, 879
  police village, grant of franchise by, 878
  public utility, right to construct or operate, by-law necessary for granting, 877
      assent of electors to, necessary, 877
    what included in term, 877
  railways, right to construct or operate, by-law necessary for granting, 877
      assent of electors to, necessary, 877
  steam, right to supply, by-law necessary for granting, 877
    assent of electors to, necessary, 877
  street railways, right to construct or operate, by-law necessary for granting, 877

MUNICIPAL FRANCHISES ACT—*Continued.*
street railways, right to construct or operate, by-law, assent of electors to, necessary, 877
water not intended for sale or use in municipality, Act not to apply to, 879

PATRIOTIC GRANTS ACT—
armouries and drill sheds, buildings other than, aid for providing, 918
attachment, certain grants not liable to, 921
bands etc., providing, aid in, 918
Belgian relief fund, grants to, 917
borrowing for the purposes of the Act, 920
    assent of the electors not necessary for, 920
    formalities for, dispensed with, 920
British red cross fund, grants to, 917
    sailors' relief fund, grants to, 917
by-laws, validation of, 921
Canadian patriotic fund, grants to, 917
    Red Cross Association, grants to, 917
expenditures in carrying out the Act, 919
fund for allowances for dependents of officers and men, grants to, 919
    assistance of dependents of officers and men on active service, for 918
grants to officers and men returned from active service, providing, 919
    validation of, 921
home defence, grants in aid of, 917, 918
hospital accommodation for persons suffering from the war, aid in providing, 917
insurance of lives of officers and men on active service for benefit of dependents, 918
machine guns, providing, aid in, 918
medical or surgical care, etc., for persons suffering from the war, aid in providing, 917
military outfit and equipment, aid in providing, 917
money appropriated for certain purposes not liable to attachment, 921
    borrowed to be excluded in computing for certain purposes, 920
municipal property, protection of, expenditure for, 919
picket duty, to pay soldiers for, expenditure for, 919
promissory notes, borrowing on, 920
Public Utility Commission, grants by, 921
rateable property, what included in, 919, 920
rates to be levied annually, 921
    levied to be excluded in computing for certain purposes, 920
    to pay amounts raised, on what to be imposed, 921
recruits, grants to aid in obtaining, 918
retroactive, provisions made, 921

PATRIOTIC GRANTS ACT—*Continued.*
    returned soldiers, expenses in connection with, 919
    rifles, ammunition and horses, expenditures for purchase of, 919
    supplies of food and clothing, purchasing and forwarding, 918

PLANNING AND DEVELOPMENT ACT—
    Act, application of, 927
    board, general plan, amendment of, by, 927
                approval of, by, 927
        meaning of, 927
        plans of subdivisions, approval of, by, 928
        practice and procedure of, 934
        subdivisions, agreements as to, approval of, by, 931, 932
    City and Suburbs Plans Act, repeal of, 934
    commission, appointment of, 933
            chairman of, 933
            composition of, 933
            corporation, to be a, 933
            expenses incurred by, 934
            members of, term of office of, 933
            name of, 933
            powers of, 933
            quorum of, 933
    councils, agreements as to subdivisions, approval of, by, 931, 932
            approval by, of general plans, 930
                    plans of subdivisions, of, 931, 932
            reasons for action of, to be stated in writing, 930
                    filing of, 930
    engineer, duties of, as to plans of subdivisions, 929, 930
            matters to be considered by, 929, 930
            reference to, of plans of subdivisions, 929
            report of, as to plans of subdivisions, 929
    general plan, adoption of, 927
            amendment of, by board, 927
                    council, 927
            approval of, by board, 927
            filing of, 927, 928
            highways, etc., to be shewn on, 927
            notice of application for approval of, 927
            Ontario land surveyor, to be certified by, 927
    joint urban zone, meaning of, 926
    mortgagees, plans of or agreements for subdivisions not binding on, 932
    notice, approval of plan of subdivision, of application for, 931
        engineer's report, of intention to consider, 930
        general plan, of application for approval of, 927

PLANNING AND DEVELOPMENT ACT—*Continued.*
- officers of corporations, performance of duties by, 933, 934
- registration, plans of subdivisions, of, 931, 932
    - sales and conveyances before, of plan, 932
    - subdivisions, agreements as to, of, 931, 932
- rules of practice, etc. of board to apply, 934
- senior municipality, meaning of, 927
    - powers of, 931
- subdivisions of lands, agreements as to, 931, 932
    - plans of, 928 to 932
        - approval of, by board, 928
            - council, 928, 932, 933
            - highway commissions, 932, 933
        - engineer, duties of, on reference to, of, 929, 930
            - reference to, of, 929
        - highways, width of, how to be indicated on, 928
        - lots, on, sale and conveyance of before approval of, 928
            - registration of, 932
        - registered, not to be, until approved, 932
        - Registry Act, to conform with, 928, 929
- treasurer to pay accounts of commission, 934
- urban zone, meaning of, 926

PUBLIC UTILITIES ACT—
- accounts, audit of, 905
- actions, limitation of, 897
- application of part 3, 896
    - part 4, 905
    - part 5, 909
- assent of electors, *see* commission.
- books of account, regulations as to keeping, 904
    - what, to be kept, 904
- builders, supply of water to, 891, 910
- buildings along line of supply, duty to supply, 907
- by-products, power to sell, 895, 910
- coal, power to sell surplus, 895, 910
- commission, abolition of, 900, 903
        - assent of electors to, when required, 900, 903
            - not required, 900
        - effect of, 900
        - Hydro-Power Commission, assent of, to, 902
    - establishment of, 899, 901, 902, 903, 913, 915

PUBLIC UTILITIES ACT—*Continued.*

- commission, establishment of, assent of electors to, when required, 899, 901, 913
      - not required, 899
    - one, for all public utilities, 900
  - existing, 900
  - name to be borne by, 899, 901, 913
  - powers of, 902
- commissioners, heads of councils to be, 902
  - members of council, other, not to be, 902
  - number and election of, 901, 902, 903
  - powers of, 902
  - salaries of, 903
    - approval of, by Hydro-Power Commission, 903
  - stockholders in certain companies, not to be, 887
  - tenure of office of, 902, 903
  - vacancies in office of, filling, 903
- companies, guaranty of payment of money by, 912
  - heads of council to be directors of, in which corporations hold stock, 912
  - loans to, 912
  - powers of, not to be exercised without by-law, 909
  - stock in, taking, by corporations, 912
- compensation for damages caused by laying of pipes within six feet of existing ones, 908
  - expropriation, 888
- contracts for supply of public utility, 896
- councils, authority of, to provide money not divested, 902
  - commissions to exercise powers of, 902
    - heads of, to be members of, 902
- damages, liability of persons doing, 890, 910
  - non-liability for, for breaking of service pipes, 891, 911
- debentures for waterworks, special rates to pay, 893
    - power to remit, 893, 894
  - preferential charge on works, etc., to form, 897, 898
- distress, etc., exemption from, 906
- electric railways, municipal, management of, by commission, 913
- execution, exemption from, 897, 906
- existing works, power to acquire, 888
- expropriation, compensation for, how to be determined, etc., 888
  - conditions precedent to exercise of power of, 888
  - intermediate lands, of, 889
  - land, water privileges, etc., of, 887
  - limitation of power of, 897, 898
  - powers of companies as to, exercise of, 909

PUBLIC UTILITIES ACT—*Continued.*
- extensions, constructing, in adjoining municipality, 896
    - terms of making, 896
- fittings, removal of, from premises of consumer, 906
- gas, *see* natural gas.
- highways, etc., laying pipes, etc., in, 888, 895
    - restoring, 888
- hydrants, erection and use of, 890
- Hydro-Electric Power Commission, consent of, required for abolition of commission, 902.
    - contracts with, 901.
    - salaries of commissioners subject to approval of, 903
- incline railways, municipal, management of, by commission, 913
- inspection of premises, 905, 906
- intermediate lands, conveying water through, 888
    - expropriation of, 889
    - power to enter on and pass over, 888
- land, expropriation of, 887, 889
    - purchase of, 887, 889, 895
    - renting of, 895
- machinery, construction of, 888
- main pipes, action does not lie for damages for laying within six feet of existing ones, 908
    - compensation for damages for laying within six feet of existing ones, 908
        - arbitration as to, 908
        - claim for, when barred, 908
    - provision for laying, within six feet of existing ones, 907, 908
- mains, construction of, for individuals, 891
- manufactories, supply of water to, 891, 910
- materials, when, exempt from execution, 897.
- meters, price for use of, fixing, 906.
- money borrowed to be charged on works, etc., 897, 898
- Municipal Board, leave of, when required for laying pipes, etc., 907, 908
    - natural gas, powers of, as to, 914
- natural gas, application of s. 63 as to, 914
    - pipes, etc., for, removal of, on forfeiture of franchise, 914
        - no action lies for, 914
    - price of, where right to export exists, regulation of, 910
    - sulphuretted hydrogen, containing, by-laws prohibiting sale, etc., of, 913
        - contravention of, consequences of, 913
        - sale, etc., of, injunction to restrain, 914

PUBLIC UTILITIES ACT—*Continued.*
  offences, 891, 892, 893, 906, 907, 910
    penalties for, 891, 893, 906, 907, 910
      recovery of, 891, 892, 893, 909, 910
  officers to be *ex officio* constables, 897
    and servants, employment of, 902
      salaries of, apportionment of, 903
  patent and other rights, acquiring, 894
  penalties, discrimination against public institutions, for, 891, 911
    extinguishing lamps, for, 907
    injuring works, for, 906, 907
    offences, for, 892, 893, 906, 907, 910
    recovery of, 909
    wilful damage, for, 906, 907
  pipes, laying down, 888, 889, 909, 910
  plant, construction and maintenance of, 888
  Power Commission Act, ss. 38, 39, not affected, 913
  power not to be exercised until authorized by by-law, 909
  property exempt from distress and execution, 905
    power to sell, when not required, 898
    security for purchase money of, when sold, 898, 899
  Provincial Institutions, penalty for exceeding rates as to, 891, 911
      rates for supplying, 890, 891, 910, 911
  public utility, duty to supply, 907
    manufacture of, 894, 895, 910
    meaning of, in part 2, 894, 910
      parts 3, 4, 5 and 6, 887
  railway companies, supply of water to, 891, 910
  railways, municipal, management of, by commission, 913
  rates for payment of debentures, 893
    what may be charged, 893
  rates and charges, collection of, 896, 897
    discretion of corporation as to, 897
    fixing of, 890, 891, 896
    hydrants, for, 890
    lien on lot or building, to be, 897
    rent of fittings, etc., for, 896
  record of proceedings to be kept, 905
  reservoirs, construction of, 888, 910
  returns to be made to council, 904
  revenues, application of, 898
    municipal treasurer, to be paid to, 905
    returns of, to be made to council, 904
  security, power to require, from consumer, 909
  service pipes, control of, 890, 910
    expenses of laying, 889, 890, 910

PUBLIC UTILITIES ACT—*Continued.*
- service pipes, injury to, 890, 910
  - laying of, 889, 910
  - repair of, 889, 910
- sewerage system, entrusting management of, to commission, 902
- Special Acts, provisions of, not affected, 901
  - rates for payment of waterworks debentures, 893
    - limit of, 893
    - remission of, 893, 894
- stop-cocks, control of, 890, 910
  - injury to, 890, 910
  - prohibition as to using, 890
- street railways, municipal, management of, by commission, 913
- streets, breaking up, for laying down pipes, wires, etc., 888, 895
- supply, power to shut off, 897, 910
- taps, approval of, 890, 910.
- telephone systems or lines, municipal, management of, by commission, 913
- townships, appointment of commissions by, 899
  - electrical power, powers of, as to, 915
  - establishment of commissions for part of, 915
- water, expropriation of, 887
  - privileges, expropriation of, 887
  - supply of other municipal corporations not to be interfered with, 888
    - builders, to, 891, 910
    - persons beyond limits of municipality, to, 891
    - purity of, right to acquire or expropriate to preserve, 897, 899
    - railway companies, to, 891, 910
    - special agreements as to, 891, 910
  - use and distribution of, regulation of, 890, 891
    - preventing wrongful, of 892
  - works, acquiring, 887, 888
    - construction of, 887, 888
    - establishment of, 887
    - existing, power to acquire, 888, 910, 911
    - operating, 887
    - other municipal corporations of, not to be interfered with, 888
- wires, rods, etc., breaking up passages for laying down, etc., 896, 910
  - carrying, through parts of buildings, 895, 910
  - conducting, along highways, etc., 895
- works, by-laws for maintenance and management of, 896
  - companies of, acquiring, by municipal corporations, 910
    - assent of electors required for, 910
    - compensation for, 911
      - arbitration as to, 911

PUBLIC UTILITIES ACT—*Continued.*
works, companies of, compensation for non-payment of, effect of, 911, 912
        method of fixing value of, 911
    existing, acquiring, 888, 910, 911, 912
villages, by-laws for appointment of commissions for, 899
        repeal of, 900
    commissions for, abolition of, 899
            assent of electors to, when required, 899
                not required, 899
        establishment of, 899
            assent of electors to, not required, 899

INDEX OF FORMS.

LOCAL IMPROVEMENT ACT—
by-law, consolidating (instalment plan) 851, 852, 853
(sinking fund plan) 849, 850, 851
construction 835 to 839, 861 to 864
debenture 856 to 860
(instalment plan) 844 to 849
(sinking fund plan) 840 to 844
procedure 832, 833, 834
to provide for payment by corporation of part of cost of work 834, 835
certificate of clerk as to sufficiency of petition 830
debenture (instalment plan without coupon) 854
(instalment or sinking fund plan) 855
declaration as to publication of notice 831
service of notice 831, 832
notice of intention to undertake work (s. 11) 826
(s. 13) 826, 827
sitting of Court of Revision 827, 828
petition for local improvement 828 to 830
special assessment roll 839, 840

MUNICIPAL ACT—
affidavit for validation of bonus or money by-law 782 to 785
local improvement by-laws 779, 780, 781, 782
public school by-law 786, 787, 788
justification (recognizance contested election) 750
(scrutiny) 750, 755
to obtain recount 746, 747
scrutiny of votes 754
ballot paper for cities and towns 715, 716
townships 717, 718
villages 716
voting on by-law 731
question 731
by-law, annexation of town or village to urban municipality (on petition) 737, 738
assenting to annexation (without petition) 736, 737
bonus 759, 760
to declare seat of member vacant 747, 748

Municipal Act—*Continued.*
  by-law, entering into contract 773
      erecting village 735, 736
      formation of police village 769, 770
      general 772
      hawkers and pedlars 760, 761, 762
      increasing area of police village 771, 772
      money 757, 758, 759
      respecting highways 766, 767
      searching for, etc., timber, gravel, etc., 767, 768
      separating junior township from union 744
          (on petition) 743
          (s. 30 (3)) 745, 746
      for taking votes on annexation 738, 739
          proposed by-law 773, 774, 775
          questions 775, 776
      transient traders 762, 763
  certificate as to assessment roll and voters' list 722
      of clerk as to election of reeves and deputy reeves 728
      on declaration of inability to read 726
      of Municipal Board as to validity of by-law or debenture, 326
  chief engineer's certificate (bonus to railway) 734
  debentures, endorsement on to control transfer of 339
  declaration of auditor 730
      election officers 729
      elector desiring to promote or oppose by-law, etc. 730
      inability to read 726
      incorporation of township in unorganized territory 713
      office 729
      qualification by candidate 713, 714, 715
  directions to voters (elections) 718, 719, 720
      (voting on by-law) 731, 732
  disclaimer 197
  Judge's appointment for holding recount 747
      order declaring bridge to be a county bridge 764
          for scrutiny of votes 755
  notice of accident on highway 640
      application to Judge to declare bridge a county bridge 763
      intention to pass by-law under s. 472 (1), clauses a, b, c 765, 766
      motion to quash by-law 756, 757
          set aside election 751, 752
  notice (promulgation of by-law) 733
      to be published with copy or synopsis of proposed by-law 776, 777, 778
          statement of question submitted 778

MUNICIPAL ACT—*Continued.*
- notice of registration of by-law 733
  - scrutiny 756
- oath of chairman (incorporation of township) 741
  - deputy returning officer after close of poll 727
  - poll clerk or messenger of delivery of ballot box to returning officer 726, 727
  - secrecy 728
  - voter 722 to 725
- objection to report (incorporation of township) 742
- petition for annexation of territory to police village 770, 771
  - town or village to urban municipality 737
  - erection of village 734, 735
  - formation of police village 768, 769
  - incorporation of township 739, 740
  - separating junior township from union (s. 30 (3)) 744, 745
  - separation of township from union 742
- poll book 721
- recognizance (contested election) 749, 750
  - (scrutiny of votes) 754, 755
- report of chairman to Judge (incorporation of township) 740, 741
- resolution of county council under s. 468, 764, 765
- synopsis of by-law in lieu of copy of by-law 753
- warrant for holding new election 748, 749

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